THE

COURT FEES ACT

(VII OF 1870)

AND THE

SUITS VALUATION ACT

(VII OF 1887)

WITH ACT XIX OF 1922 ALL AMENDMENT ACTS OF BENGAL, ASSAM, BIHAR, BOMBAY, C. P., MADRAS, AND PUNJAB, TO END OF 1926, INTRODUCTION, EXHAUSTIVE COMMENTARIES, RULINGS OF THE PRIVY COUNCIL, & OF THE SEVERAL HIGH COURTS & CHIEF COURTS IN INDIA & BURMA, CIRCULARS ORDERS, LATEST RULES AND NOTIFICATIONS AS TO REDUCTIONS AND REMISSIONS OF COURT FEES AND OTHER RULES BY THE GOVERNMENT OF INDIA, THE LOCAL GOVERNMENTS & THE HIGH COURTS, CORRECTED TO END OF 1926 COMPARATIVE TABLES, &c., &c., &c.

THIRD EDITION.

BY

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PREFACE TO THE THIRD EDITION.

I again express my thanks to the legal profession for their particularly kind appreciation of the second edition of this book which was exhausted in about a year.

I have again minutely revised the book, re-written several portions and have added several new topics and new Rules. All the new Amendment Acts of the different Provinces, passed since, have been incorporated, and the case-law has been brought down to December, 1926.

I am confident, the profession will find this edition much more useful than its predecessors.

M. N. BASU.

HIGH COURT,
Calcutta, 7th January, 1927.

PREFACE TO THE SECOND EDITION.

I am grateful to the legal profession for the kind appreciation shown to this book

The delay in bringing out the Second edition is due to my want of time I have thoroughly revised the book with special care and have remedied all the defects The Amending Acts of all the Provinces have been incorporated

The extent of difficulty in reconciling the various interpretations will appear from the following observations of the Patna High Court in the Full Bench Case of *Krishna Mohan Sinha* v. *Raghunandan Panday*, I L R 4 Patna Series 336 at page 349, where the learned Chief Justice said "the wording of this Act is in some respects certainly unscientific and difficult to interpret and its interpretation has been the subject of a multitude of decisions in the Courts."

The case-law up to end of June 1925 has been incorporated and the rules have been brought up to date.

HIGH COURT:
Calcutta, 15th July, 1925

M N. BASU.

PREFACE TO THE FIRST EDITION.

In this little book I have attempted not merely to explain the various sections of the Acts in the light of the decisions of the High Courts, but also to reconcile the decisions of the several High Courts wherever they appear to be conflicting. How far I have succeeded it will be for the profession to judge

For facility of reference I have divided the topics under various headings and sub-headings Topics like method of valuation of suits to be instituted in Courts, Death Duties, the apparent conflict between valuation under the Suits Valuation Act and that under the Court Fees Act have been discussed with special care.

The latest amendments made by the various provinces up to date have been noted in their proper places, and all the Amendment Acts with complete Schedules printed at the end of the book. The recent amendment of the Legislature of Section 4 of the Court Fees Act, 1870, by Act XIX of 1922, which received the assent of the Governor-General on the 3rd October, 1922, has also been incorporated

The case-law has been noted up to end of October, 1922, and having regard to the importance of the Rules, I have incorporated the *Revised Rules* of the Government of India and of the several Provinces and High Courts

My thanks are due to Mr. I N De, M A, B L., Vakil, who materially assisted me in passing the book through the press

I will consider myself highly rewarded if this book proves useful to those for whom it is intended

HIGH COURT:
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M N BASU.

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INTRODUCTION.

From the earliest times, even under the Hindu Law, attempts have been made to put down false and vexatious litigation by making parties in fault pay a fine to the King. A successful suitor was made liable to pay something to the King evidently as a compensation for the expense the State had to incur in paying the judicial officers. Although more modern writers have urged abolition of taxation of litigation there is much that can be said in favour of its retention.

During the earliest years of British rule there was no tax upon litigation in India. The result was that the number of false and vexatious suits went on increasing year after year. To remedy this evil, Regulations imposing taxes on litigation were passed in the several Presidencies.

In Bengal, Bengal Regulation XXXVIII of 1795 was passed imposing an institution fee in civil suits. This institution fee was converted into stamp duties by Ben. Reg. VI of 1797. Ben. Reg. X of 1797 imposed duties on criminal suits, and II of 1798, on applications for review. These Regulations were repealed by Reg. I of 1814, which was followed by Reg. XXVI of 1814, IV of 1816, XV of 1816, XIV of 1824, and II of 1825. All these Regulations were repealed by Reg. X of 1829 which consolidated the law in Bengal. Ben. Reg. VIII of 1831 imposed duties on suits for realisation of rent, and Reg. XV of 1845 exempted native officers and soldiers from payment of stamp duty.

In Bombay, the earliest Regulation was Bombay Regulation VIII of 1802 which was followed by Bombay Regulations XIV of 1815, VII of 1816, IV of 1817. These were all repealed by Bombay Regulation I of 1827 which was replaced by Bom. Reg. XVIII of 1827.

In Madras, the earliest Regulation was Madras Regulation III of 1802. This was followed by Mad. Reg. IV of 1808, V of 1808, VIII of 1808, XVIII of 1808, II of 1816, II of 1817 and VI of 1817.

All these Regulations of the different provinces were amalgamated into one Act, XXXVI of 1860, which for the first time enacted the law for the whole of British India. This was followed by Act X of 1862, Act XI of 1863, Act X of 1865, Act XVIII of 1865 and Act XXVI of 1867 which made some documents hitherto exempt, liable to stamp duty.

Act XXVI of 1867 was repealed by the Court Fees Act VII of 1870 which again was modified in the same year by Act XVII of 1870.

Several additions were made to the Act VII of 1870, by subsequent amendments

By the Devolution Act (XXXVIII of 1920), the various *Provinces* have been empowered to fix their court fees in their respective Provinces In accordance with this Act, several amendments to the Act VII of 1870 have been made by the different provinces in 1922 19[illegible], and 1926

The purpose of all those Acts is the same, *viz.*, to secure revenues to the State, but in doing so, they do not 'arm a litigant with a weapon of technicality against his opponent.' (13 Bom. 507 P. C.).

STATEMENT OF REPEALS & AMENDMENTS OF INDIA COUNCIL UP TO DEC., 1926.

Section 2 and Schedule III repealed .	Act XIV of 1870, Sch.
New Section 2 added	Act X of 1901, s 2.
Section 7, (new clause (cc) XI inserted and section amended)	Act VI of 1905, s 2 (1) (2).
Section 15 and Schedule 1 Art 2 amended	Act XX of 1870, s. 1.
Schedule 1 repealed in part .	Act VIII of 1871, Sch. I.
Section 19, Cl XXIV, amended .	Act XV of 1872, s 2.
Section 19A to 19H added .	Act XIII of 1875, s 6.
Schedule I, Art 13, added *(for the Punjab)*	Act XVIII of 1884, s 71, as amended by Act XXV of 1809, s. 6.
Section 20 repealed in part and section 23 repealed	Act XVII of 1887, Sch.
Schedule I and II repealed in part and amended .	Act VI of 1889, s. 18.
Section 19, Cl VIII, and Schedule I amended	Act VII of 1889, s 13 (2).
Schedule I amended	Act XI of 1889, s. 84, and Act V of 1908, s. 155.
Section 19, Cl IV repealed, and Schedule II, Art 1 repealed in part	Act XIII of 1889, Sch.
Sections 19H, 19I, 19J, 19K, inserted	Act XI of 1899 s. 2.
Sections 3, 7, 10, 19C and 19G repealed in part, and sections 24, 32 and Schedule II, Arts 8 and 9, repealed,	Act XII of 1901, Sch.
and section 33 Schedule I, Art 2, and Schedule II, Art 4 amended .. .	Act XI of 1889, s. 84, and VI of 1900, s 47.
Section 16 repealed	Act V of 1908, s. 156.
Schedule I, Art 15, added *(for Upper Burma)*	Reg I of 1896, s. 36, as amended by Reg. 5 of 1901, s. 4
Schedule II, Art 10, repealed ..	Act VIII of 1890, Sch.
Schedule II, Art II, repealed in part .	Act V of 1908, s 155.
Schedule II, Art 15, amended	Act V of 1908, s. 156.
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Schedule III, and annexure added ..	Act XI of 1890, s 3
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Schedule I, Arts 11, 12A, amended .	Act VII of 1910, s. 2
Act further amended by	Act XVII of 1914.
Act further amended by	Act XXXVIII of 1920.
Section 4 of the Act further amended by ...	Act XIX of 1922.

The Act was amended by the Amending Acts of Several Provinces from 1922-1926.

LIST OF ABBREVIATIONS.

Agra	Agra High Court Reports.
All I R or A I R.	All India Reporter.
All or A	Indian Law Reports, Allahabad series
All L J or A L J	Allahabad Law Journal.
All W N. or A W N.	Allahabad Weekly Notes
B L R	The Bengal Law Reports
Bom	Indian Law Reports, Bombay series
Bom H C	Bombay High Court Reports.
Bom L R	Bombay Law Reporter.
Bur L T	Burma Law Times
Cal	Indian Law Reports, Calcutta Series.
C L R	The Calcutta Law Reports.
C W N	The Calcutta Weekly Notes.
C L J	The Calcutta Law Journal
Dist	*Distinguished*
F B	Full Bench.
I A	Law Reports, Indian Appeals
I C or Ind Cas	Indian Cases
L B R	Lower Burma Rulings.
L L J	Lahore Law Journal.
L W	Law Weekly, Madras
Lahore or Lah	Indian Law Reports, Lahore Series
Mad	Indian Law Reports, Madras Series
M H C. R.	Madras High Court Reports.
M I. A.	Moore's Indian Appeals.
M L J.	Madras Law Journal.
M L T	Madras Law Times
M. W N	Madras Weekly Notes.
N. L R	Nagpore Law Reports.
O. C.	Oudh Cases
O L. J.	Oudh Law Journal.
Pat.	Indian Law Reports, Patna Series.
P C	Privy Council.
P. J	Printed Judgment of the Bombay High Court.
39 P R. 1907	Punjab Record, No 39 of 1907
119 P. L R 1907	Punjab Law Reporter, No 119 of 1907
61 P W R 1907	Punjab Weekly Reporter, No 61 of 1907.
Pat C. W. N.	Patna Supplement to the Calcutta Weekly Notes
Pat. L J or P. L J	Patna Law Journal.
Pat. L T or P. L. T.	Patna Law Times.
Pat L. W. or P. L W.	Patna Law Weekly.
Ran or Rang.	Indian Law Reports, Rangoon Series.
Ref	*Referred to.*
S L R	Sindh Law Reports.
U. B R.	Upper Burma Rulings
W R	Sutherland's Weekly Reporter.

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Table showing Amendments made to Sections of the Court Fees Act, 1870, by the Provincial Amendment Acts of 1922 and 1926.

Secs of Act VII of 1870	Ben Act IV of 1922	Assam Act II of 1922	B & O Act I of 1922	Bom Act III of 1926	Mad Act V of 1922	C P Act I of 1923.	Punjab Act VII of 1922
S 4			Amended				Amended
,, 5							
,, 6					Amended		
,, 7			Amended	Amended	Amended	Amended	
,, 11					Amended		
,, 17			Amended				
,, 18	Amended	Amended	Amended		Amended	Amended	Amended
,, 19	Amended	Amended	Amended			Amended	
Sch. I.—							
,, Art. 1	Amended	Amended	Amended	Amended	Amended	Amended	Amended
,, ,, 6	Amended	Amended	Amended		Amended	Amended	
,, ,, 7			Amended				
,, ,, 8			Amended	Amended			
,, ,, 9			Amended				
,, ,, 11	Amended	Amended	Amended	Amended	Amended	Amended	
,, ,, 12	Amended	Amended	Amended	Amended	Amended		
,, ,, 12A				Amended			
,, ,, 13							
Sch II.—						Amended	Amended
,, Art 1	Amended	Amended	Amended	Amended	Amended	Amended	Amended
,, ,, 1A			Amended				
,, ,, 4			Amended				
,, ,, 5							Amended
,, ,, 6				Amended			Amended
,, ,, 7				Amended			
,, ,, 10	Amended	Amended	Amended		Amended	Amended	Amended
,, ,, 11	Amended	Amended	Amended		Amended	Amended	Amended
,, ,, 12	Amended	Amended	Amended	Amended	Amended		Amended
,, ,, 14			Amended	Amended			
,, ,, 17	Amended	Amended	Amended	Amended	Amended	Amended	
,, ,, 18			Amended	Amended	Amended		
,, ,, 19			Amended	Amended	Amended	New Article No. 22 inserted.	New Article No. 22 inserted
,, ,, 20			Amended	Amended			
,, ,, 21			Amended	Amended			

THE
COURT FEES ACT.

(Act No. VII of 1870.)

[11th March, 1870.]

[As modified up to December, 1926,]

CHAPTER I.

PRELIMINARY.

Short title — **1.** This Act may be called the Court Fees Act, 1870.

Extent of Act — It extends to the whole of British India.

Commencement of Act — And it shall come into force on the first day of April, 1870.

NOTES.

Local Amendments.—This Act has been amended in Bengal by B. C. Acts IV and II of 1922, in Assam by Assam Act II of 1922 (for 3 years), in Bihar and Orissa by B and O Act I of 1922; in Bombay by Bombay Act III of 1926; in C. P. by C. P Act I of 1923 (in force up to 31st March, 1926); in Madras by Madras Act V of 1922, in Punjab by Punjab Act VII of 1922 as amended by Punjab Acts I and VI of 1926; S. 4 was amended by Act XIX of 1922.

The power to amend for each Province has been provided by the Devolution Act (XXXVIII of 1920).

Objects and Reasons.—For the Statement of Objects and Reasons, see Gazette of India, 1869, Pt. V., p. 57; and for

Proceedings in Council, see *ibid*, 1869, Supplement, pp. 1179 and 1452; *ibid*, 1870, Supplement, pp 52, 378, 421, 427, and 434

Preamble.—This Act has no preamble whereby its purposes can be ascertained, *Gavaranga* v. *Batakrishna*, 32 Mad. 305: 6 M L T 129.

Object.—"The Court Fees Act, 1870, was, as its name imports, an Act primarily passed for the purpose of prescribing the fees which are to be paid in respect of documents to be used in Courts It also provides in the schedules for the stamps to be used in certain offices other than offices of Courts of Justice." *Balkaran Rai* v *Gobindanath Tewary*, 12 All. 129 F.B.: 10 A W N 39 The object of the Act is to lay down rules for the collection of one form of taxation, and this is regarded to be the scope of the enactment, *Mahammad Salim* v. *Nabian Bibi*, 8 All. 282 (289).

"The Court Fees Act was passed not to arm a litigant with a weapon of technicality against his opponent, but to secure revenue for the benefit of the state. This is evident from the character of the Act, and is brought out by Section 12, which makes the decision of the first Court as to value final as between the parties and enables the Court of appeal to correct any error as to this, only where the first Court decided to the detriment of revenue" *Rachappa Subrao* v *Sidappa Venkat Rao*, P. C.: 43 Bom 507, 24 C W N 33 · 29 C L. J. 452 · 50 Ind. Cas. 280 21 Bom L R 489 17 A L. J. 418 · 36 M L. J. 437. "The Court Fees Act is essentially a fiscal enactment Its primary object is to protect the revenue and not to coerce the subject," *Chandramani Koer* v. *Basdeo Narain Singh*, 4 Pat. L. J. 57 (71) 49 Ind. Cas. 442.

Scope.—"That Act not only prescribes fees, but provides how those fees are to be ascertained, how questions as to the sufficiency of fees on documents so far as Courts are concerned, are to be determined, and the conditions under which only the documents in the First and Second Schedules to the Act may be received, filed, registered or used, as the case, may be, in Courts of India. The Court Fees Act also specifies the documents which need not be stamped under the Act for the purpose of being used in Courts," *Balkaran Rai* v. *Gobindanath Tewary*, 12 All. 129 F. B. (130): 10 A. W. N. 39.

British India.—"*British India* shall mean all the territories and places within His Majesty's Dominions, which are for the time being governed by His Majesty through the Governor-General of India, or through any Governor or other officer subordinate to the Governor-General of India" Sec. 3 (7) *General Clauses Act X of 1897*.

Application of the Act.—The general rule is that Acts are prospective, and not retrospective in their operation, *Pramethanath Pal Choudhuri* v. *Saurav Dasi*, 47 Cal. 1108: 24 C. W. N. 1011. To this rule there are two exceptions—(a) where Acts are expressly declared to be retrospective and (b) where they only affect the procedure of the Court, *Javanmal* v. *Muktavai*, 14 Bom. 516. But changes in law or amendments relating to procedure have retrospective effect, *Balkrishna* v. *Bapu Yesaji*, 19 Bom. 204, *Promothonath* v. *Saurav Dasi*, 47 Cal. 1108: 24 C. W. N. 1011.

Thus, stamp duty on an appeal filed after the Court Fees Act came into operation was held to be levied according to the provisions of the Court Fees Act, even though the original suit was valued on the principles laid down in the Act XXVI of 1867. *Mt Bhugobutty Kooer* v. *Mt Kusturee Kooer*, 15 W. R. 272. So, where an appeal was returned because filed without a copy of the decree appealed against, before, but was again presented after the passing of the New Act of 1870, held that the appeal must be filed with stamp of the amount prescribed by the new law of 1870, *Aradhun Dey* v. *Gholam Hossein*, 7 W. R. 461. See also *G. L. Fagan* v. *Chandrakanta Banerji*, 7 W. R. 452. *In re Sreenath*, 7 W. R. 462. But where a plaint was presented while the old act was in force and it was subsequently discovered that the plaint is insufficiently stamped after the amending act has come into force, held that the amount of Court Fees must be calculated under the old law. *Tara Prasanna Chongdar* v. *Nrisingha Moorari Pal*, 51 Cal. 216; 28 C. W. N. 860; 39 C. L. J. 212.

Where the appeal was presented to an officer not properly authorized to receive appeals within the vacation, the Patna High Court held, the appeal must be deemed to have been presented on the reopening date of the High Court when the proper officer was present, and as the amending Act came into operation before that date, the amended Act applied and the increased duty was payable. *Anand Ram Pramhans* v. *Ram Gulam Sahu*, I. L. R. 2 Pat. 264; 1922 Pat. C. W. N. 365, (1923) A. I. R. 150 (Patna).

Where a party applied for a copy of the decree after Act VII of 1870 came into operation, held that the new Act applied although the decree may have been prepared when the old law was in force, *In re Hureehar Mahtoon*, 14 W. R. 167.

Grant of Probate *de bonis non* is governed by the law in force at the time of the original grant and not by any *interim* modification introducing a higher rate, *Swaranamoyee* v. *Secretary of State*, 43 Cal. 625: 20 C. W. N. 472: 22 C. L. J. 370: 30 Ind. Cas. 394. "What the Legislature appears to"

intended is that where the full fee chargeable under the Court Fees Act on a probate at the time it is granted has been paid, no further fee shall be chargeable when a second grant is made in respect of that property," *Ibid* See also *In the goods of Ameerun*, 15 W. R. 496.

But in an application for review of judgment, the fee payable is to be calculated on the court fee paid on the memorandum of appeal or plaint as the case may be although the Court Fees Act may have been amended in the mean time and scale of court fees raised *Nanhi Lal Agrani* v. *Jogendra Chandra Dutta*, 39 C L. J (222), 82 I C, 297; 28 C. W. N. 403, 1924 A I. R. 881 (Cal)

A plaint was filed in a Court which was ultimately found not to have jurisdiction in the matter and the plaint was returned to be presented to the proper Court, but before the return of the plaint the Court Fees Act was amended, held, that the plaint must be deemed to have been instituted on the date of new presentation after return of plaint and the Court Fee was payable under the amended Act. *Bimala Prasad Mookherjee* v *Lal Moni Debi*, 30 C. W. N. 90; 1926 A. I. R. 355 (Cal).

Where the Act does not apply.—The Act has been declared inapplicable to proceedings before officers making settlements and survey when such a case is transferred to a Civil Court under Sec 5 of Reg III of 1872, *Bibee Golap Kumari* v *Muhammad Kadiruddin*, 12 C. W. N. 917. This Act does not apply to applications under Ss. 105 (1) and 105 (2) of the Bengal Tenancy Act, *vide* Sec 105 (3) *of the B. T. Act*, and to proceedings before Settlement Officers under Reg. III of 1872. (Sonthal Perganas Regulation).

This Act does not apply to court-fees payable under Sec. 170 of the Agra Tenancy Act which are to be computed under the Fourth Schedule to that Act. See U. P. Act II of 1901. Under Sec. 51 of the Land Acquisition Act (I of 1894), no costs are to be levied on copies of awards furnished to the parties.

Construction.—As to the construction of the Act see notes under Sec. 6 *infra*.

Extent.—Act 7 of 1870 has been declared in force—

in Upper Burma generally (except the Shan States) by the Burma Laws Act, 1898 (13 of 1898, s. 4 (1), Bur. Code;

in British Baluchistan, by the British Baluchistan Laws Regulation (1 of 1890), s. 3, Bal. Code;

in the Santhal Parganas, by the Santhal Parganas Settlement Regulation (3 of 1872) as amended by the

Santhal Parganas Justice and Laws Regulation, 1899 (3 of 1899), Ben Code, Vol. I;

in the sub-division of Angul, by the Angul District Regulation, 1894 (1 of 1894), s. 3, Ben. Code, Vol I.

It has also been declared, by notification under s. 3 (a) of the (Scheduled Districts Act, 1874), to be in force in the following Scheduled Districts, namely.—

the District of Hazaribagh, *see* Gazette of India, 1881, Pt I p 570,

the District of Lohardugga (now the Ranchi District, *see* Calcutta Gazette 1899, Pt I, p. 44; the District of Lohardugga then included in the present District of Palamau, separated in 1894), *see* Gazette of India, 1881, Pt. I, p 508;

the District of Manbhoom, *see* Gazette of India, 1881, Pt I, p 509;

the Pargana Dhalbhoom in the District of Singhbhoom, *see* Gazette of India, 1881, Pt. I, p. 510;

the Scheduled Districts in Ganjam and Vizagapatam, *see* Gazette of India, 1898, Pt. I, p. 869;

The Tarai of the Province of Agra, *see* Gazette of India, 1876, Pt. I, p 505.

It has been extended by notification under s. 5 of the same Act to the Kolhan in the district of Singhboom, *see* Gazette of India, 1907, Pt I, p 655, and under ss. 5 & 5A of that Act to the following Scheduled Districts, namely:—The Garo Hills District, the Khasi and Jaintia Hills District, the Naga Hills District, the North Cachar District, the Mikir Hill Tract in the Nowgong District and the Dibrugarh Frontier Tract in the Lakhimpur District, provided that the Act does not apply to natives of these districts and tracts who are assessed to house-tax except in such places and cases as the Deputy Commissioner may withdraw from the operation of the exemption, *see* Assam Gazette, 1897, Pt. I, p. 861; Gazette of India, 1884, Pt. I, p. 164; the Lushai Hills, with the same proviso, *see* Gazette of India, 1904, Pt I, p. 913, and Assam Gazette, 1904, Pt. II, p 787.

It has also been applied to the Baluchistan Agency territories by the Baluchistan Agency Laws Law, 1890, s. 4 (1), Bal. Code.

The Act came into permanent operation in Aden on 1st April, 1876, *see* Bombay Government Gazette, 1876, Pt. I, p. 956.

It has been declared inapplicable to proceedings

officers making a settlement, and in certain other cases under the Santal Parganas Settlement Regulation (3 of 1872), s. 8, as amended by the Santal Parganas Justice and Laws Regulation, 1898 (3 of 1899), Ben Code, Vol. I.

This Act does not apply to applications under s. 105 (1) and (2) of the Bengal Tenancy Act, 1885 (8 of 1885), *see* sub-s. 3 of s. 105 of that Act, Ben. Code, Vol. II.

The amount of fees payable in certain cases in the Provinces of Agra under s. 170 of the Agra Tenancy Act is to be computed as in the 4th Schedule to the Act, see U. P. Act 2 of 1901 (U. P Code, Vol II).

The Act has been amended in Upper Burma by the Upper Burma Civil Courts Regulation, 1896 (I of 1896), s. 36 as amended by the Upper Burma Civil Courts (Amendment) Regulation, 1903 (5 of 1903), Bur. Code; in the Punjab by the Punjab Courts Act, 1884 (18 of 1884), s. 71 Punjab and N. W. Code and in Lower Burma by the Lower Burma Courts Act, 1900 (6 of 1900), s 47.

"Chief Controlling Revenue Authority" defined.

2. In this Act, unless there is anything repugnant in the subject or context, "Chief Controlling Revenue authority" means—

(*a*) in the Presidency of Fort St. George, the Presidency of Fort William in Bengal and the territories respectively under the administration of the Governors of Bihar and Orissa and the North-Western Provinces and the Chief Commissioner of Oudh—the Board of Revenue;

(*b*) in the Presidency of Bombay, outside Sindh and the limits of the town of Bombay—a Revenue Commissioner;

(*c*) in Sindh—the Commissioner;

(*d*) in the Punjab and Burma, including Upper Burma—the Financial Commissioner; and

(c) elsewhere—the Local Government or such officer as the Local Government may, by notification in the official Gazette, appoint in this behalf.

NOTES.

The present s. 2 was added by s. 2 of the Court-fees (Amendment) Act, 1901 (10 of 1901), Genl. Acts. Vol. V. The original section relating to repeal of enactments was repealed by the Repealing Act, 1870 (14 of 1870).

Settlement Cases.—Fees on processes issued by settlement officers in proceedings for settlement of rent under Part III of Ch. X of the Bengal Tenancy Act and in all proceedings under Sec. 106 of the Bengal Tenancy Act are subject to the Rules framed by the High Court under Sec. 2 of the Court Fees Act, 1870. *See Revenue Circular, dated 2nd March, 1904.*

"Chief Controlling Revenue Authority."—The Collector of Bombay and Superintendent of Stamps is the chief controlling revenue authority for Bombay: In the C. P. the Financial Commissioner is the chief revenue authority.

For authority appointed for—

(1) the island of Bombay, *see* Bombay Government Gazette, 1902, Pt. I, p. 35.

(2) Baluchistan, *see* Gazette of India, 1908, Pt. I, p. 389 and

(3) the Assam Valley Districts and certain parts of the district of Cachar, *see* E. B. & A. Gazette, 1905, Pt. I, p. 5.

CHAPTER II.

FEES IN THE HIGH COURTS, AND IN THE COURTS OF SMALL CAUSES AT THE PRESIDENCY-TOWNS.

Levy of fees in High Courts on their original sides

3. The fees payable for the time being to the clerks, and officers (other than the sheriffs and attorneys) of the High Courts established by

Letters Patent, by virtue of the power conferred by section 15 of the Indian High Courts Act, 1861, or section 107 of the Government of India Act, 1915,

or chargeable in each of such Courts under No. 11 of the First and Nos. 7, 12, 14, 20 and 21 of the second Schedule to this Act annexed;

Levy of fees in Presidency Small Cause Courts

and the fees for the time being chargeable in the Courts of Small Causes at the Presidency-towns and their several offices:

shall be collected in manner hereinafter appearing.

NOTES.

Changes in Law.—The words "Section 15. .. .. Government of India Act, 1915" were substituted by the Repealing and Amending (Act XXIV of 1917) s 2.

For Statute 24 & 25 Vict C. 104, *see* the Indian High Courts Act, 1861, which was amended by the Government of India Act, 1915

The word "sixteen" in paragraph 2 was repealed by Act XII of 1891

Scope.—The words of s. 3 of the Court Fees Act must be controlled by reference to s. 15 of the High Court's Charter Act.

Mahomed Isack Sahib v. *Mahomed Mohidin*, 45 Mad 849 ; 43 M L. J. 436 (437) ; 70 Ind. Cas. 813 , 1922 M W N. 511.

Amending Notification.—A notification in the Fort St. George Gazette dated 5th May 1922 announced that an increase in the Court Fees payable on the original side of the High Court "do come into force from the date of publication of the Fort St. George Gazette." The Gazette was received in the office at 5 p m. after office hours Held that the increased duty is payable even on plaints filed on the 5th May, 1922. *In re Court Fees* 46 Mad. 685, 45 M. L. J. 557 ; 1923 M. W. N. 883 F. B

Manner of Collection.—The court fee shall be collected under Ch. V. of the Court Fees Act in stamps and not in cash, but the amount of fees payable is determined by Rules framed by the High Court under Sec. 15 of the Letters Patent, and

Sec 107 of the Govt of India Act, on original suits and on memoranda of appeals from the original side.

"The mode of Collecting the fees mentioned in s. 3 is dealt with in s 25 which provides that they shall be collected by stamps "

Krishna Mohan Sinha v. *Raghunandan Pandey*, 1925 Pat. C W N 65, I L R 4 Pat. 336 ; 1925 A. I R. 392 (Pat.).

See also *In re Bhubanaswar Trigunait*, 29 C. W. N. 879

Presidency Small Causes Courts—

As to the Presidency Small Causes Courts, fees are to be paid under Ch X of the Presidency Small Cause Courts Act.

Chapter X of the Presidency Small Causes Courts Act (Act XV of 1882) deals with fees and costs and s. 77 of the last chapter, saves the application of ss. 3, 5 and 25 of the Court Fees Act

S 3 of the Court Fees Act provides for the levy of fees in Presidency Small Cause Court, s 5 provides for the procedure in case of difference as to necessity or the amount of fees in such Courts, s 25 provides that all fees referred to in s. 3 is to be collected by stamps. *Ganpat* v. *Prem Singh*, 202 P. L. R. 1912 ; 15 Ind Cas. 122.

Fees on documents filed, &c, in High Courts in their extraordinary jurisdiction.

4. No document of any of the kinds specified, in the First or Second Schedule to this Act annexed, as chargeable with fees, shall be filed, exhibited, or recorded in, or shall be received or furnished by, any of the said High Courts in any case coming before such Court in the exercise of its extraordinary original civil jurisdiction;

or in the exercise of its extra-ordinary original criminal jurisdiction;

in their Appellate jurisdiction

or in the exercise of its jurisdiction as regards appeals from the [judgments (other than judgments passed in the exercise of the ordinary original civil jurisdiction of the Court) of one"]

or more judges of the said Court, or of a Division Court;

or in the exercise of its jurisdiction as regards appeals from the Courts subject to its superintendence;

as Courts of reference and revision

or in the exercise of its jurisdiction as a Court of reference or revision:

unless in respect of such document there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee for such document.

NOTES.

Amendment.—The words "judgment of two" were repealed and the words "judgments (other than judgments passed in the exercise of the ordinary original civil jurisdiction of the Court of one" were substituted by Amending Act XIX of 1922

The Section has also been amended by B. and O. Act, of 1922, for Bihar and Orissa and by Punjab Act VII of 1922 for Punjab which amendments substituted the word "one" for the word "two" between words "of" and "or ".

Scope.—"Sec. 4 does not apply to the High Courts in their ordinary original civil, criminal, admiralty or ecclesiastical jurisdiction," *Balkaran* v. *Gobindanath*, 12 All. 129 F. B.: 10 A W N. 39. Sec. 4 of the Court Fees Act forbids a High Court to receive a memorandum of appeal insufficiently stamped, *Ram Sahay Ram* v *Lakshmnarain Singh*, 3 P. L. J. 74, 5 P. L. W. 18, 42 Ind. Cas 675: *Lakhi Narain* v. *Chowdhury Kirtibas*, 18 C. L. J. 133: 19 Ind. Cas. 971; *Krishna Mohan Sinha* v. *Raghunandan Pandey*, F. B. 1925 Pat. C. W. N. 65 (72) where it was held that s. 4 deals with the fees on documents coming before the High Courts in the exercise of their Appellate or Revisional Jurisdiction in cases coming from the subordinate courts, or in their Extraordinary Original Jurisdiction.

Division Court.—A Division Court must be constituted of two or more judges of the High Court, *Nabu Mondul* v. *Cholim Mullick*, 25 Cal. 896 (905): 2 C. W. N. 405 F. B. See also Sec. 108 of the Govt. of India Act, 1915

Letters Patent Appeals.—No court-fee is leviable on an appeal under Sec 10 of the Letters Patent of the Allahabad High Court from the judgment of a single judge of the Court in as much as Sec 4 of the Court Fees Act does not provide for the case of such appeals, *Bhadool Pande* v *Munni Pande*, 44 All. 13; 19 A L J 677 63 Ind. Cas. 318 Nor under the Letters Patent of the Patna High Court, *Raghubar Singh* v *Jethu Mahton*, 1922 C W N (Pat) 88 65 Ind. Cal 675; 3 P L. T. 194. Nor of the Lahore High Court *Har Dial Shah* v. *The Secretary of State for India in Council* I L. R. 3 Lah 420, 68 Ind. Cas. 428, 1923 A I R 275 (Lahore) On an appeal under Sec 10 of the Letters Patent of the Allahabad High Court from an order of a single judge of the Court remanding a case under Sec. 562 of the C P C. the proper fee is Rs. 2, *Balli Rai* v. *Mahabir Rai*, 21 All 178 19 A W N. 23.

Note—The effect of amendment by Act XXI of 1922 is to abrogate the decision of the Allahabad High Court in *Bhadool Pandey* v *Munni Pandey*, 19 A. L. J. 677: 63 Ind. Cas. 318, and of the Patna High Court in *Raghubar Singa* v. *Jethu Mahton*, 1922 C W N (Pat) 88 · 65 Ind. Cas. 675: 3 P. L. T. 194. The Patna decision has also been abrogated by the amendment of S 4 of the Court Fees Act by the B. & O. Council, by B & O Act I of 1922 The amendment also abrogates the above decision by the Lahore High Court

Cross-objection—No cross-objection can be filed in Letters Patent Appeals as Or. XLI r 23 C. P. C. does not apply, *Brojendra v. Prasanna Kumar*, 32 C. L J. 48; *Kausalia* v. *Gulab*, 21 All. 297.

Review—Court-fees can be levied on an application for review of a judgment of a Division Bench passed on Letters Patent appeals, *Husaini Begum* v. *The Collector of Muzaffarnagar*, 11 All 176 · (1889) 9 A W N. 27.

No document etc. shall be filed, exhibited, or recovered in or shall be received or furnished.

The word *shall not be filed* etc. mean that such documents cannot come into existence unless the requisite stamp is paid. *Sahai Nund* v *Mungniram*, 12 Cal 542.

Document—A memorandum of appeal is a document within the meaning of this section as well as sections 25, 28, 30 and Schedules I and II of the Court Fees Act, *Balkaran* v. *Gobinda Nath*, 12 All 129 F B (1890) 10 A.W.N. 39

See also *Krishna Mohan Sinha* v. *Raghunandan Pandey*, F.B 1925 Pat C.W.N. 65; I.L.R. 4 Pat 336; 1925 A.L.R. 392.

"Filed."—Means that the document has been admitted

put on the files of Court, *Moti Shahu* v. *Chhatri Das*, 19 Cal. 780 *Amjad Ali* v *Muhammad Ismail*, 20 All. 11 (17).

Where an appeal is presented with the memorandum insufficiently stamped the Court is not bound to receive the same.

Ram Sahay v. *Pandit Lachminarayan*, 5 P.L.J. 74; 3 P. L. W. 18, 42 I. C. 675.

But where the document has already been received it is not for the party to say that the document should be struck off from the record. The Court may allow the other party to pay the proper fee *Manecklal Vadilal* v *Chandulal Balabhai Shah*, 1920 A I R 343 (Bom)

Presentation of Appeal—No appeal is legally presented if the memorandum of appeal is not properly stamped, *Shahadat and others* v. *Hukam Singh*, (1924) A I R 401 (L.)

S. 4 of the Court Fees Act is imperative in its terms and makes it impossible for the Court to entertain a memorandum of appeal upon which the proper amount of Court Fees has not been paid

Lakhi Narain Jagdeb v. *Choudhury Kirtibas Das*, 18 C. L J 133 (136), 19 I. C. 971.

Furnished.—Furnishing is made at the time when the Court determines that a grant is to be made and when it is ready to be issued to the party applying for it, *Dhunput Singh* v *The Government*, 17 W R 489 Where a will was proved but there was no actual grant because no stamp duty was paid, held that there was no grant and the grant of probate cannot be proved, *Alamelammal* v *P. N. K. Suryaprakasaroya Mudaliar*, 38 Mad. 988. 29 M.L J. 680

Procedure in case of difference as to necessity or amount of fee.

5. When any difference arises between the officer whose duty it is to see that any fee is paid under this chapter, and any suitor or attorney, as to the necessity of paying a fee or the amount thereof, the question shall, when the difference arises in any of the said High Courts, be referred to the taxing-officer, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of

the Chief Justice of such High Court, or of such Judge of the High Court as the Chief Justice shall appoint, either generally or specially, in this behalf.

When any such difference arises in any of the said Courts of Small Causes, the question shall be referred to the Clerk of the court, whose decision thereon shall be final, except when the question is, in his opinion, one of general importance, in which case he shall refer it to the final decision of the First Judge of such Court

The Chief Justice shall declare who shall be taxing officer within the meaning of the first paragraph of this section.

NOTES

Amendment.—This section has been amended in 1922 in Madras by Madras Act V of 1922, Sec 3, thus "In the second paragraph of Sec 5 of the principal Act, the words 'Registrar' and 'Chief Judge' shall be substituted for 'Clerk of the Court and 'First Judge' respectively

Application—Original side.—Where the question arose between the Registrar on the Original Side of the Madras High Court and the attorney of the party as to the amount of court fees payable on a memorandum of appeal from the Original Side of the Court under the Rules of that Court, the High Court *held*, "S 4 is not applicable because that is in terms confined to the extraordinary original civil jurisdiction, that is to say, to cases transferred by the High Courts *suo motu* and other cases" "When a person tenders a stamped document to the Registrar of the High Court, and asks him to enter his appeal, it is clear that he is, within the meaning of this Act, paying a fee to an officer of that High Court, and in taking that fee, the High Court is acting by virtue of the general powers conferred upon it by S 15 of the High Court's Charter Act" Hence S 5 of the Court Fees Act applies and it is competent to the Chief Justice to refer the matter to another Judge for decision. *H. Maomed Ishack Sahib,* v. *Mahomed Mohideen and another,* 45 Mad. 849 ; 43 M.L.J. 436 ; 70 Ind. Cas. 813 ; (1922) M W.N. 511 ; 16 L.W. 210. See

also *Perumal Chetty* v *Kandasamy Chetty*, 46 Mad. 592 ; (1923) A I R 160 (Madras)

Probate Duty.—"No doubt has at any time been felt either in this Court or in Bombay that S 5 applies to probate duty. In *re Bhubaneswar Trigunait*, 29 C. W. N 879 ; 52 Cal. 871 ; 95 I. C 529 , 1925 A. I R. 1201 (Cal).

Final.—The word "final" in Section 5 of the Court-fees Act has the same meaning as in Section 12, though it is applied to a different subject. In Section 5 it is applied to a decision as to the necessity of paying a fee or the amount thereof, whereas in Section 12 it is applied to a decision as to every question relating to valuation for the purpose of determining the amount of any fee chargeable under Chapter III on a plaint or memorandum of appeal. The cases in which it has been held that, notwithstanding the use of this word in Section 12, an appeal lies as to the decision as to the category in which the relief sought by the plaintiff or appellant falls, do not mean that the decisions which the section declares to be final, are nevertheless appealable, but that the question of category is not a question relating to valuation and therefore is not declared by the Section to be final In both Sections 5 and 12 it is used in the ordinary legal meaning of final. "It could not, in my opinion, be contended that category is not under Section 5 of the Court-Fees Act for the taxing officer ; otherwise he could not decide whether any fee was payable or the amount thereof " As to Section 5 of the Court Fees Act, there is no provision so far as I can ascertain under which the Court or any Bench of the Court has power to consider the propriety of a decision under that Section by appeal, in an appeal, or in revision," *Balkaran Rai* v. *Gobinda Nath Tewary*, 12 All. 129 (152, 153 & 156): (1890) 10 A. W. N. 39 F. B *Lurkhur Chaube* v. *Rambhajan Chaube*, 23 A. W. N. 214 The decision of a taxing officer as to the amount of court fees payable and therefore his decision as to the category within which the suit falls, is final and binding under Section 5 of the Court Fees Act. *Kuar Karan Singh* v. *Gopal Roy*, 32 All. 59: 6 A. L. J. 972 ; 4 Ind. Cas 123. The taxing officer's decision cannot be questioned at the hearing of appeal, *Rangapai* v. *Baba*, 20 Mad. 398 · *Kasturi Chetti* v. *Deputy Collector of Bellary*, 21 Mad. 269 : *Puran Singh* v. *Kesar Singh*, 39 P. R. 1907. *In re Bhubaneswar Trigunait*, 29 C. W. N. 879 ; 52 Cal. 871 ; 95 I. C. 529 ; 1925 A. I. R. 1201 (Cal.).

Power of the Taxing Officer.—The wording of Section 5 is so explicit and general that it leaves the court no option. The Taxing Officer has jurisdiction to fix the amount of fee payable and if he decides that the valuation put by the

appellants upon the relief was incorrect, he has the power to correct it, even if he has done anything which the law does not empower him to do, the Court Fees Act gives the High Court no jurisdiction to interfere with his decision as to the amount of the fee *Ram Sekhar Prasad Singh* v *Sheonandan Dubey*, 2 Pat 108 1922 Pat C W N 337 . 70 I. C. 43.

Under Section 5 the High Court has power to alter the valuation of a suit with regard to its own memorandum of appeal, which powers, however are delegated to the Taxing Officer or the Taxing Judge whose decision again is final. Even if those officers should make a manifest mistake in the exercise of their jurisdiction, their decision is not subject to appeal to or review by the Court itself. *Per Das J. contra.* The Taxing Officer has no such power. *Krishna Mohan Singh* v *Raghunandan Pandey*, F B 1925 Pat C. W. N. 65 (75) ; I L R 4 Patna 336 , 1925 A I R. 392 (P.).

Under Section 5 of the Court Fees Act power of the court to decide disputed questions of court fee is vested in the Taxing Officer subject to his power to refer the matter to the Taxing Judge when a question of general importance arises. This authority extends to all such questions arising in the High Court, whether the deficiency alleged is on the memorandum of appeal to the High Court or on a plaint or memorandum of appeal filed in the court below. *Bahal Kuar* v *Narain Singh*, 22 A L. J 1038 ; 84 I. C. 822 ; 1925 A. I. R. 184 (All)

Absence of Decision by the Taxing Officer.—If there be no decision by the taxing officer under Section 5 of the Court Fees Act, objection as to sufficiency of the court fees paid, can be raised at the hearing of the appeal, *Jugal Pershad Singh* v *Parbu Narayan Jha*, 37 Cal. 914, *Kasturi Chetti* v. *Deputy Collector, Bellary*, 21 Mad. 269.

Erroneous Decision by the Taxing Officer.—In the case of *Lagan Burt Kuar* v. *Khakhan Singh*, 3 Pat. L. J. 92, it was held that the decision of the taxing officer even if erroneous is binding on the party. See also *Md. Sadik* v. *Md. Jan*, 11 All. 91 and *Badri Pershad* v. *Kundan Lal*, 15 All. 117 ; 13 A. W. N. 45, but in *Anna Narayan Pavji* v. *Madhyama Sthitisila Paraspara etc.*, 46 Bom. 840 ; 44 Bom. L. R. 313 ; 67 Ind. Cas. 364 ; 1922 A. I. R. 172 (Bombay) the Bombay High Court apparently disregarded the erroneous decision of the Taxing Officer.

Character of the Decision of Taxing Officer.—"The decision of a taxing officer under Section 5 of the Court Fees Act as to the necessity of paying a fee or the amount thereof is not a decree as *decree* is defined in Section 2 of the Code of Civil

Procedure. It is not an *order* as defined in Section 2 of the Code of Civil Procedure; his decision is not the decision of the Civil Court." "A further reason for that opinion is that the taxing officer is not a Court within the meaning of that section," *Balkaran Rai* v *Gobinda Nath Tewary*, 12 All. 129 F. B. (156 and 157) (1890) 10 A. W N. 39.

Power of Division Bench.—A Division Bench has no jurisdiction to hear a stamp reference even though it is referred to them by the Taxing Judge, *Khachera* v. *Kharag Singh*, 33 All 20, 7 A L J 842 7 Ind Cas 315. *Kuldip* v. *Harihar*, 75 I C 871; 1924 A I R 161 (P) Where the Court of first instance rejected the plaint for insufficiency of stamp and on appeal to the High Court, the taxing officer agreeing with the view of the trial court required the appellant to pay additional court fees calculated under Section 7 paragraph IV of the Act, held that the decision of the taxing officer is final and that the Division Bench has no jurisdiction to re-open it before the appeal was admitted, *Musst Chandrabati Koer* v *Goorey Lal Singh* 4 Pat. L J. 700 1920 C W. N. (Pat) 179 52 Ind Cas 508 *Chunni Lal* v *Sheocharan Lal and others*, 47 All. 756, 1925 A I R 787 (All.), 23 A L J 725.

The High Court has no power or jurisdiction to interfere with an order passed by the Taxing Officer settling the amount of court fees payable on a memorandum of appeal, which order is final and against which there is no appeal, review or revision Even if the Court is of opinion that the Court fee levied is in excess of that payable under the law it has no power to order a refund of the excess amount claimed. *Hitencha Singh* v *Maharajadhiraj of Darbhanga*, 92 I. C. 626; 1926 A. I. R. 147 (P.).

Power of the Chief Justice.—Section 5 makes it clear that such reference is to be heard by the Chief Justice or by such Judge of the High Court as the Chief Justice may appoint, *In the Goods of Harriett Teviot Kerr*, 18 C. W. N. 121 (128): 18 C. L. J 308: 21 Ind. Cas 502; *Khachera* v. *Kharag Singh*, 33 All. 20: 7 A L. J. 842: 7 Ind. Cas. 315

Taxing Officer is not bound to give advice.—The taxing officer is not bound to give advice to the party; *Balkaran Rai* v. *Gobinda Nath Tewary*, 12 All. 129 F. B.: 10 A W. N. 39.

Duty of Taxing Officer.—"In my opinion, however, it is no part of the duty of a taxing officer or of a Judge or Court on a question as to the sufficiency of a stamp or a fee to consider whether a plaintiff or an appellant is asking for more declarations or reliefs than are required for his protection. A plaintiff or an appellant may have reasons, which,

whether they are good or bad, may not be apparent to a taxing officer or taxing Judge for asking for several declarations or reliefs It is not the province of the taxing officer or the taxing Judge to decide what are the declarations or reliefs which a plaintiff or an appellant may require for his protection. To impose upon a taxing officer or the taxing Judge such a duty would be to impose upon him a duty hardly, if at all, less onerous or difficult than the duty of deciding the case itself, *Balkaran Rai v. Gobind Nath*, 12 All 129 (161): 10 A. W. N. 39

Examination of Stamp Paper.—Examination of the stamp paper itself belongs more properly to the revenue officer of the Government, and consequently the stamp paper itself, if necessary, should be forwarded to the Collector for examination The Registrar of the High Court is not to examine it; *Bhikoo Molla v. Rashmonee Dossee*, 9 W R 357.

CHAPTER III.

FEES IN OTHER COURTS AND IN PUBLIC OFFICES.

Fees on documents filed, &c., in Mofussil Courts, or in public offices.

6. Except in the Courts hereinbefore mentioned, no document of any of the kinds specified as chargeable in the First or Second Schedule to this Act annexed shall be filed, exhibited, or recorded in any Court of Justice, or shall be received or furnished by any public officer, unless, in respect of such document, there be paid a fee of an amount not less than that indicated by either of the said schedules as the proper fee on such document.

NOTES.

Application of the Section.—Appeals must be valued according to the provisions of the Act in operation at the time of its presentation, and the original valuation under the repealed

enactment is to be disregarded; *Proceedings, 15th Nov. 1870.* 5 Mad. H. C. R. Ap. 44

Scope.—Section 6 contains a prohibition against the use of improperly stamped documents in respect to the subordinate courts. *Krishna Mohan Sinha* v *Raghunandan Pandey*, F. B. 1925 Pat. C W. N. 65 (72); I. L R. 4 Patna 336; 1925 A. I. R 392 (Patna).

Construction of the Act.

Title—The title of an Act may be resorted to to explain an enacting clause when doubtful, *Hurro Chander* v. *Shoorodhani Debya*, 9 W R 402 (404) F. B

Marginal Notes.—The marginal notes of an Act of Parliament cannot be referred to for the purpose of construing the Act; *Thakurani Balraj Kunwer* v *Rai Jagatpal Singh*, P. C. 8 C. W N 699 (705) L R. 31 I A 132 26 All. 393: 1 A. L. J 384 · 11 Bom L R. 516. See also the cases cited in *Nawab Bahadur of Murshidabad* v. *Gopinath Mandal*, 13 C. L. J. 625 (630)

Proceedings in Council.—The Court cannot refer to the proceedings in the Legislative Council to determine the meaning of the Statute; *Sarat Sundari* v *Uma Prosad*, 8 C. W. N. 578; nor is it permissible to refer to the speeches of the Legal Member, *Queen-Empress* v. *Bal Gangadhar Tilak*, 22 Bom 112.

Headings.—The headings prefixed to a section or set of sections are regarded as preamble to those sections; *Maxwell on Interpretation of Statutes*, 6th Ed page 92; *Halsbury's Laws of England*, Vol. 27, pp. 117-118

The heading of a group of sections cannot be pressed into a constructive limitation upon the exercise of the powers given by the express words of the Act. *Abdul Rahim* v. *The Municipal Commissioners for the city of Bombay*, P. C 42 Bom. 642 (672); 23 C. W N. 110.

To be Strictly Construed.—An enactment imposing stamp duties upon the subject must be strictly construed; *Empress* v. *Sadananda*, 8 Cal. 259: 10 C. L. R. 367; *Manindra Chandra* v. *Secretary of State*, 34 Cal. 257: 5 C. L. J. 148; *Mylapore Fund* v. *Madras Corporation*, 31 Mad. 408; *In re Port Canning Land Improvement Company, Ltd.*, 16 W. R. 208; *Girdhar Nagjishet* v. *Ganpat Moroba*, 11 Bom. H C. A. C 129; *Muhammad Salim* v. *Nabian Bibi*, 8 All 282 (287); *Lumsden* v. *Inland Revenue Commissioners*, 1914 App. Cases 877 (897).

Construction should be favourable to subject.—The construction should be as far as possible in favour of the subject; *Amanut Begam* v. *Bhajan Lal*, 8 All. 438: 6 A. W. N. 146. The subject cannot be taxed except by clear and unambiguous

language, 19 Mad. 148 F B.: *In re Chin Ah aing*, 24 Ind. Cas. 823. 7 L. B. R. 359 7 Bur. L. T. 275, *Halsbury's Laws of England*, Vol 27, p 180.

Statutes which impose pecuniary burdens are subject to the rule of strict construction, and all charges upon the subject must be imposed in clear and unambiguous terms, as they tend to operate as penalties. The subject is not to be taxed unless the language of the statute clearly imposes the obligation. *Thaddeus Nohapiet* v. *The Secretary of State for India*, 30 C. L. J. 209 (211).

Crown must bring it within the Letter of Law.—There cannot be any equitable construction of a fiscal statute and the Crown seeking to recover a tax must bring it with the letter of law, otherwise the subject is free, *Killing Valley Tea Company, Ltd* v. *Secretary of State for India in Council*, 32 C L. J. 425 (432); *Deputy Commissioner of Singbhum* v *Jagadish Chandra*, 62 I. C. 513: 6 Pat. L J 411. Per Das J in *Krishna Mohan Sinha* v. *Raghunandan Pandey*, F. B. 1925 Pat. C. W. N. 65 (88) I L. R. 4 Patna series 336: 1925 A. I. R. 392 (P).

In Cases of Doubt—Where there is doubt in the matter, a Court is bound to decide the matter in favour of the subject as the subject cannot be taxed except by clear and unambiguous language, *Anonymous Case*, 10 Cal. 274 (282) per Field J., *Doyachand* v *Hem Chand Dharam Chand*, 4 Bom. 515 F. B.; *The Deputy Commissioner of Singbhum* v. *Jagadish Chandra Deo*, 6 Pat. L. J. 411. 62 I. C. 513.

In the Full Bench Case of *Kisory Lal Ray* v. *Sharat Chandra Majumdar*, 8 Cal 593 (597), Sir Richard Garth C.J, said "There is a very wholesome maxim of law *Optimus legis interpres Consuetudo*; and Mr. Broome is his work on Legal Maxims 2nd Edition, p. 534 says this —where a statute uses language of doubtful import, the acting under it for a long term of years may well give it an interpretation to that obscure meaning, and reduce that uncertainty to a fixed rule."

"And I take it, that this principle is especially applicable, where the subject of interpretation is a matter of every day occurrence And when we find that for a series of 8 or 10 years, a law which imposes a heavy tax upon litigation has received a particular interpretation in favour of the suitor, and a course of practice has prevailed for years, throughout the whole country, in accordance with that interpretation, I think that any Court of Justice ought to be slow in changing that interpretation or course of practice to the prejudice of the suitor, unless it sees clear and weighty reasons for so doing. See also *Ijjatulla Bhuiya* v. *Chandra Mohan Banerjee*, F. B. 34 Cal 945: 11 C. W. N. 1133: 6 C. L. J. 255; *Bidhata Ray* v. *Ram Charitra*

Ray, 12 C. W N 37 : 6 C. L. J. 651, *Dowlat Ram* v. *Vitho*, 5 Bom. 188 (193)

In *Baleswar* v *Bhagirathi*, 35 Cal 701 (713) : 12 C. W. N. 657, 7 C. L J. 563 held "It is a well settled principle of interpretation that Courts in construing a Statute will give much weight to the interpretation put upon it, at the time of its enactment and since, by those whose duty it has been to construe, execute and apply it I do not suggest for a moment that such interpretation has by any means a controlling effect upon the courts, such interpretation, may, if occasion arises, has to be disregarded for cogent and persuasive reasons, and in a clear case of error, a court would without hesitation refuse to follow such construction." See also the case of *Corporation of Calcutta* v. *Binoy Krishna Bose*, 12 C. L. J. 476 15 C W N. 34, *Mathura Mohan* v. *Ram Kumar*, 43 Cal 790 (810) 23 C. L. J. 26: 20 C W. N 370. A Court cannot override the plain language of the statute except upon reference to its general tenor and spirit and the argument must be convincing *Mahadeb Aon* v. *Chairman of the Howrah Municipality*, 11 C. L J. 524. The Courts always hesitate to over-rule decisions which are not clearly erroneous and mischievous and which have affected the conduct of the community for a long time, *Kedar Nath Hazra* v *Maharaja Manindra Chandra Nundi*, 11 C. L. J. 106.

Practice of Court.—"The above observation is applicable only to cases if a language of the statute be of doubtful import and a practice which is in contravention of the law, even if such practice be the practice of the High Court cannot make lawful that which is unlawful nor can a practice of court justify a court in putting upon an Act of the Legislature a construction which is contrary to the plain wording of the Act," *Bunwarilal* v. *Daya Sankar Misser*, 13 C W. N. 815 (821) *Khedu Mahato* v. *Budhan Mahato*, 27 Cal 508 (511-512).

Conduct of Revenue Authorities.—Interpretation which has long been acted upon cannot be disregarded by a court of law and the court should put upon it the construction first placed upon it when it came into force ; but the conduct of the revenue authorities in the past does not bind the court, *Killing Valley Tea Company* v. *Secretary of State for India in Council*, 32 C. L. J. 421 (431, 432). See also *Bidhata Ray*, 12 C. W. N. 37 (42) : 6 C L. J. 651 (657) ; *Kisori Lal Ray* v. *Sarat Chandra Majumdar*, 8 Cal. 593.

Where the Act is repealed or amended.—The general rule is that a repealed statute cannot be acted on after it is repealed, but that with regard to all matters that have taken place under it before its repeal, they remain valid. *R.* V. *Denton*, 21 L. J. M. C. 208. See S. 6 of the General clauses Act (Act X of 1897).

Where sections are reproduced.—Where the sections of the former Act are reproduced in the later Act, the inference is that the construction put upon the provision of the former Act by Courts is adopted and affirmed by legislature, *Protap* v *Sarat*, 33 C. L J. 201 ; *Jogendra* v *Shyam*, 36 Cal 543 . 9 C. L. J. 271 followed. See also *Kalyandappa* v. *Chanbasappa*, P. C. 28 C. W N. 666

Effect of repeal of a repealing Act—When a repealing Act is subsequently repealed by another Act, the last repeal does *not revive* the former Act or its provisions, unless there are words reviving them *In re Jawa Nathoo and others* (1916) 44 Cal. 459 *Hari Mohadeji Savarkar* v *Balambhat Raghunath Khare*, 9 Bom 233 *Deputy Legal Remembrancer* v *Ahmad Ali*, 25 Cal 333 , 2 C W. N. 11. See also S 7 of the General Clauses Act (Act X of 1897)

Mode of interpretation.—When the words are plain and meaning clear, the court must give effect to the language used in spite of hardship, *Balkaran Rai* v. *Gobinda Nath Tewary*, 12 All 129 F B · 10 A W N 39 The language of an enactment must receive its natural meaning, without any assumption as to its having probably been the intention to leave unaltered the law as it existed before The object of a codification is that the law should henceforth be ascertained by interpreting the language used instead of searching the authorities to discover what may be the law as laid down in prior decisions, *Narendra Nath Sirkar* v *Kamal Basini Dassi*, L. R 23 I A 18 P C 23 Cal 563 6 M L J 71 The true mode of interpreting a statute like the Court Fees Act which has been repeatedly amended, is not to consider individual sections, but to take them as a whole and to give effect to the legislative intent upon a particular matter , *In the Goods of Harriet Teviot Kerr*, 18 C W. N 121 18 C L J 308 21 I. C 502 But if the meaning is ambiguous then the previous history may be considered, *Bank of England* v *Vagliano Bros*, 1891 App Cas. 107 (144) ; *Nilmani Kar* v *Raja Sati Prasad Garga Bahadur and others*, 32 C L J 302

Change in the mode of interpretation—Reversal of the previous accepted interpretation of law does not displace its application to a purchaser at Court Sale held when the previous interpretation was understood to contain the law on the subject ; *Abdul Aziz Khan* v. *Appayasami Naicker and others*, 27 Mad. 131 P C 8 C W. N 188.

Where co-ordinate sections are inconsistent.—Where the co-ordinate sections are inconsistent, an attempt should be [illegible] to reconcile them, and if that is not possible then the later section should override the former section and an [illegible]

on a particular subject must be construed strictly against a general provision, *Amarchand Ray* v. *Prasanna Dasi*, 25 C. W. N. 9.

Construction by reference to the Construction of Acts in pari materia.—When Acts are in *pari materia* they are to be read together, but when this is not so, the construction put upon one is not a guide for the construction of another, *Daya Chand* v. *Hem Chand Dharam Chand*, 4 Bom. 515 See also Halsbury's Laws of England Vol. 27, pp. 138-140. But one fiscal act cannot be construed by reference to another fiscal act, *In re Soroje Bashini Debi*, 20 C W. N 1125

Proviso.—Provisos may be a general guide in the section of one or other of two possible constructions of the words to be found in the enactment where there is doubt as to its scope or as the proper view to be taken of it, *Mahadeb Aon* v *Chairman of the Howrah Municipality*, 11 C. L. J 526.

Documents.—Plaints are documents but not written statements being excluded by Section 19, Cl 3, but a set-off claimed in the written statement must bear stamp duty as on plaint, *Guise* v. *Anantaram Rathi*, 10 C W N. 109 The former difference of opinion has been set at rest by the amendment of Court Fees Act by Act V of 1908, see Sch I, Art. 1. See *Abdul Aziz* v *Razak Ali*, 17 C L J 365 F B

Cross-objections.—Cross-objections require to be stamped *ad valorem* as being expressly mentioned in the Schedule I, Art. I of this Act

Memorandum of Appeal.—A memorandum of appeal is a document included in the first and second schedules to the Court Fees Act, and therefore cannot be filed without being properly stamped, *Balkaran Rai* v. *Govind Nath*, 12 All. 129; 10 All. W. N. 39.

Certificate of Guardianship.—A certificate of guardianship requires a stamp as being mentioned in the Second Schedule to the Court Fees Act, *Sahai Nand* v. *Mungniram Marwari*, 12 Cal. 542.

Succession Certificate.—A certificate under Act XXVII of 1860 requires a stamp, *Dhunput Singh Doogur* v. *The Government*, 17 W. R. 489.

See also the Succession Certificate Act (Act VII of 1889) and Art. 12, Sch. I of the Court Fees Act.

No stamp payable.—See Sections 19, 33 and 35 of this Act and the Notifications. Objections against findings after remand under Or. 41, r. 26 C. P. C, need not be stamped not being mentioned in the Schedule.

Optional Applications.—i.e., applications which need not be in writing need not be stamped.

Applications to Courts not required by the Code to be in writing need not be stamped, *Telley* v *Administrator General of Bengal*, 2 N. W. P. 418 Applications for a certificate of sale need not be stamped, *Hira Ambaidas* v *Tekchand Ambaidas*, 13 Bom 670 The application for refund of stamp duty need not be in writing, *Bhikoo Molla* v *Rash Monee Dassee*, 9 W. R. 357 Telegraphic messages are regarded as oral communications and need not be stamped, *Bengal Stamp Manual.*

Return of Plaint—By the C P C. (Act XIV of 1882), s 21, it is enacted that on re-presentation of a plaint court fees are not to be levied but there is no such corresponding section in Act V of 1908.

Whenever a court, after a trial has begun or even after it has been concluded, thinks it has no jurisdiction to try the suit and returns the plaint for presentation to the proper court, no fresh court fees are chargeable on presentation to such court, *Prozakar* v *Vishwambar*, 8 Bom 313, *Kandu* v *Konda*, 8 Mad 62, see contra *Jagjiban* v *Magdum*, 7 Bom 427

When the plaint which has been returned is presented in a court of competent jurisdiction the suit, even for the purposes of court fee on such plaint should be leviable under the law which was in force at the time when the plaint was originally presented If the court fee has increased in the meantime the plaintiff must be credited with the court fee originally paid, *Bimala Prasad* v *Lal Moni*, 1926 A. I R 355 (Cal.); 30 C W N. 90.

"By Revenue Court"—When a Settlement Officer, before whom a suit was instituted without court fees under section 8 of Santhal Pargannah Regulations (Reg. III of 1872), returns the plaint under section 5 of that Regulation to be presented to the Civil Court, no institution court fee can be demanded by the Civil Courts, *Bibee Golap Kumari* v *Md Kadiruddin*, 12 C. W N 917

But see *contra*, *Gandaram* v *Sain*, 132 P R 1892, where the plaintiff brought a fresh suit on the point in a Civil Court.

Appeals under Agency rules.—Appeals under the *Agency rules against the decision of the Governor's agent* and referred by Government to the High Court for disposal, are not chargeable under the Court Fees Act *Reference under the Court Fees Act, Section 5*, 22 Mad 162

Government not exempt from payment of court fees.—When the Government is party to a suit or proceeding the principle enunciated in *Bell* v *Municipal Commissioner of the*

City of Madras, 25 Mad. 493 is applicable, although that was a case under the City of Madras Municipal Act. Mr. Justice Bhashyam Ayyangar at p. 497 said, "There is no similar exemption, as in the Stamp Act in favour of Government under the Court Fees Act Government pays court fees like other litigants and if successful, recovers the same as costs on the adversary." "Thus it will be seen that Government is really benefitted There is another weighty reason against the exemption of Government from paying court fees, for the result of such exemption would naturally be to increase the burden of court fees upon the rest of the litigants by raising the scale of fees."

Indian Chiefs not exempted.—When an application made to British courts or officers is such, that a particular form, stamp or procedure is required by law the functionary is not at liberty to dispense with, and thus to proclaim himself superior to the law So also on the part of the applicant, his application implies for the purpose in hand a submission to the law and to the system of law with its accessories which he invokes and he cannot as an applicant or suitor demand terms differing from those prescribed by law, *B. G. Resolution No. 2740, 17th of April, 1888*

Dispute as to the amount of court fees payable.—In cases of dispute as to the amount of court fees payable the court is to frame an issue on the point and proceed to try that issue first or determine it at the time of the disposal of the suit along with other issues, *Ganga Prosad* v *Bhawani Sheikh*, 62 Ind. Cas 853 (Oudh)

Filed.—The word "filed" means something more than "presented" for admission It means that the document has been admitted and put on the files of the court, *Amjad Ali* v. *Muhammad Ismail*, 20 All. 11 (17), *Moti Sahu* v. *Chhatri Das*, 19 Cal. 780.

Plaint.—*Plaint not bearing proper stamp*

Calcutta High Court.—When a plaint is presented bearing insufficient stamp but the deficiency is made up within the time allowed, the plaint is to be considered as presented in time, *Moti Sahu* v. *Chhatri Das*, 19 Cal 780; *Padmananda* v *Ananta Lal*, F. B. 34 Cal 20; 11 C W. N 38; 4 C. L. J. 422.

Madras High Court.—A suit is not instituted within the meaning of the explanation to section 4 of the Limitation Act by presentation of a document purporting to be a plaint, if that document, while not undervaluing the claim, is written on paper that does not bear proper court fees, *Venkatarayya* v. *Krishnarayya*, 20 Mad 319; dissented from in *Govaranga Sahu* v. *Bata Krishna Patra*, 32 Mad. 305: 19 M. L. J. 340: 6 Ind. Cas

503 F. B., where it was held that the word "plaint" includes a plaint though insufficiently stamped. See also *Assan* v. *Pathumma*, 22 Mad. 404

Patna High Court —Where the plaint was presented with insufficient court fees on the last day of limitation, but on the defect having been cured after the period of limitation has expired, the plaint was registered, *held* that the suit is not barred, *Gaya Loan Office, Ltd* v *Iudh Behary Lall*, 1 P. L. J. 420 See *Pawan Kumar Chand* v *Musst Dulari Kuer*, 1 P. L. T 544 58 I C 216 3 P L J 745 *Raghunandan Sahay* v *Ram Sunder Pershad*, I L R 4 Patna 190

Memorandum of Appeal.—*Allahabad High Court.*—A memorandum of appeal is a document included in the first and second schedules to the Court Fees Act, and is a document within the meaning of sections 4, 25, 28 and 30 of the Act, and therefore cannot be filed or recorded in or received by the High Court unless and until the proper court fees in respect of it is paid and is of no validity unless and until it is properly stamped Consequently it is not at that time a memorandum of appeal within the meaning of section 541 C P C and the appeal cannot be regarded as having been at that time presented within the meaning of section 4 of the Limitation Act or valid for any other purpose, *Balkaran Rai* v *Govinda Nath*, 12 All 129 10 A W N 39 F. B , *Abbasi Begum* v *Nanhi Begum*, 18 All 206, but the above views were considerably modified by the Full Bench in the case of *Hari Ram* v *Akbar Hossein*, 29 All 749 , which was a case of a mistake in payment of Court Fees

Calcutta High Court —For similar views of the Calcutta High Court, see *Aubhaya Charan Dey* v *Bisseswari*, 24 Cal 889 , *Fakulunnisa Bibee* v *Kissore Mohon Ray*, 19 Cal 747. But see *Skinner* v *Orde*, L R , 6 I A 126 2 All. 241 4 C L R. 331.

But the old law was altered by Act VI of 1892 which amended the Code of Civil Procedure and by Section 3 of that Act a new Section 582A was added to the Code of Civil Procedure (Act XIV of 1882) which enacted that subsequent payment of deficit Court Fees shall cure the defect

Madras High Court —The effect of Section 582A of the Code of Civil Procedure (Act XIV of 1882) is to enable a defective memorandum of appeal to be retrospectively validated if the insufficiency of the stamp was caused by mistake on the part of the appellant, *Valambal Ammal* v *Vythilinga*, 24 Mad. 331 ; *Valambal Ammal* v *Vythilinga*, 25 Mad 380 , *Chennappa* v. *Raghunath*, 15 Mad 29

Bombay High Court —Section 582A C P. C indicates the

will of the legislature that the appeals will not be rejected on the ground of their not being sufficiently stamped, if such insufficient stamp arose from the appellant's mistake, *Bai Ful* v. *Desai*, 22 Bom 849.

Patna High Court.—Where an appeal is filed with a memorandum insufficiently stamped without any excuse, the Court is not bound to receive the same and to give time to make good the deficiency . it would be exercising its discretion in an unreasonable manner if it were to do so, *Ram Sahay Ram Panday* v *Kumar Lachmi Narayan Singh*, 3 P. L J. 74 : 5 P. L W. 18 . 42 Ind Cas. 675. See also *Jodhan Pershad Singh* v. *Nanku Prasad Singh*, 46 Ind. Cas 509 See also *Brij Krishna Das* v. *Murli Ram*, 4 Pat. L. J. 703 : 56 Ind Cas 316

Effect of payment of deficit court fees after the period of limitation has expired.—*Calcutta High Court.* Date of institution of suit should be reckoned from the date when the plaint was presented and not from the time when the deficiency in court fees was made good, *Moti Sahu* v *Chhatri Das*, 19 Cal. 780 (782), where the reasons are given A suit was brought *forma pauperis* on behalf of a minor but the suit was dismissed by the Munsiff under an alleged compromise An appeal was filed before the District Judge but the memorandum was insufficiently stamped and an application was filed to prosecute the appeal *forma pauperis* At the time of hearing of the application, objection was taken that the minor has inherited certain properties whereon the guardian offered to pay court fees. The appeal court allowed the guardian to put in court fees and admitted the appeal The court fees were paid within the time allowed. Held that the case came within either section 5 of the Limitation Act or Section 582A C P C and the appeal is not out of time, *Durga Charan Nuskar* v *Dookhiram Nuskar*, 26 Cal 925.

When the plaint is engrossed on a paper not duly stamped but is accompanied by an amount of money sufficient to cover stamp duty ; it was held that the plaint was properly stamped, *Govind Kumar Choudhury* v. *Har Dayal Nag*, 3 B. L. R. App 72. But under the present Act, cash money cannot be accepted, see Section 25 of the Court Fees Act.

In the following cases deficit court fees were paid within the time and the plaint was deemed as if presented in time, *Hari Mohan* v *Naimuddin*, 20 Cal. 41, *Surendra Kumar* v. *Kunj Behary*, 27 Cal 814 : 4 C. W. N. 818 ; *Rajkisori* v. *Madan Mohan*, 31 Cal. 75 ; *Mabibul* v *Mahammad Reza*, 8 Cal. 192, where it was further held that a plaint cannot be rejected after registration under Section 54 of the Code of Civil Procedure (Act XIV of 1882, & Or 7 r. 11 of the present Act) unless time is given to make up the deficiency.

Bombay High Court.—See also *Achut Ram Chandra* v. *Nagappa*, 38 Bom. 41

Patna High Court —Where the plaint was presented on the last day of limitation with insufficient court fees and the balance being paid after limitation, it was registered—held that the suit is not barred, *Gaya Loan Office, Ltd.* v *Audh Behari Lall*, 1 Pat L J 420.

For Madras and Allahabad High Courts see cases cited *supra*, Section 149 C P C.

When an appeal was filed in time but was insufficiently stamped and on the deficiency being pointed out to the appellant by the office, he disputed the report and did not make up the deficiency till long after the appeal was barred by time, held he could not get an extension of time *Wadhawa Singh* v *Sunder Singh*, 21 P W R 1921, 59 I C 689.

Time for payment of deficit court fees should not be extended unless there is a bona fide mistake, *Lekh Ram* v. *Ramji*, 1 Lah 234 3 L L J 370 57 I C. 215 See also *Fatteh Singh* v *Babu Ram*, 67 I C 130. *Puran Chand and others* v *Emperor and others*, 1926 A I R 343 (Bombay).

Section 149 C P C must not be so construed as to nullify the provisions of section 4 of the Court Fees Act, hence if the appellant deliberately and to suit his own convenience pays insufficient court fees on his appeal the Court is not bound to receive the same and extend the time *Ram Sahay Ram Pandey* v *Kumar Lakshmi Narayan Singh*, (1917) 3 P. L J 47: 5 P. L W. 18 42 I C 675, *Tikan Ram* v *Bosa Ram*, 67 I. C. 106 but in *Jai Singh* v *Sita Ram*, 21 A L J 333, 74 I C. 757; 1923 A. I R 349 (All) it was held that a learned Judge has no right to reject an appeal for insufficiency of stamp without exercising any discretion in the matter

Court's Power to grant extension of time.—Under the present Act, the power is exercised under Section 148 and 149 of the Code of Civil Procedure (Act V of 1908)

A court has power to grant extension of time originally fixed to put in deficit court fees after the expiry of the original period, *Dewan Amir Hossain* v *Nanak Chand*, 12 C. L J. 62 · 14 C. W N. 882 6 Ind Cas 424, see also *Surendra Prasad* v *Aftafuddin Ahmed*, 26 C W N. 391, 71 I C 43, *Bhagwan Das* v. *Abu Ahmed*, 15 Bom. 263. When a party puts in requisite court fees after the expiry of time and the appeal was registered, that is not an enlargement of time as an application is necessary and the facts must be brought to the notice of the court. The Registrar of the Court of Small Causes cannot grant extension of time under Section 148 of the Code of Civil

Procedure (Act V of 1908), *Budhan Shah* v. *Sitanath*, 13 C L J. 78: 7 Ind. Cas. 578. *Farjand Ali* v. *Abdul Hamid*, 60 I. C. 493.

Misconduct of a pleader's clerk.—Where the plaintiff handed over the deficit Court Fees to the pleader's clerk to be paid into Court, but the clerk instead of paying the same into Court misappropriated it, and filed an application for extension of time, which the Court rejected. The plaintiff on hearing this filed an application for setting aside the order for rejection, which was dismissed, *held* that the application by the plaintiff is an application to extend the time and that under the circumstances of the case as the plaintiff did everything and did pay the amount to the pleader's clerk time should be extended. *Adit Prasad Singh* v *Ramharakh Ahir*, I L R 4 Patna 180

In the following cases plaint was filed with insufficient stamp and it was held that the court can grant an extension of time and on the deficiency being made up, the plaint was regarded as if filed in time, *Brahmomoyi* v *Andi*, 27 Cal. 376, *Shib Krishna Dawn & Co* v *Satis Chandra*, 38 Cal. 522; *Karman* v *Cockell*, 1 C W N 670, *Bidhata* v *Ram Chandra*, 12 C W N. 27 (43) · 6 C L. J 651, *Hem Chandra* v. *Doorga Pada*, 3 Ind Cas 435, *Kisore* v *Sabdal*, 12 All 553, *Hari Ram* v *Akbar Hussain*, 29 All 749 (case of a mistake in payment of court fees), *Govaranga* v. *Boto Krishna and others*, 32 Mad. 305 19 M L J. 340 4 Ind. Cas 503

Calculation of Time—Where deficit court fees were ordered to be paid within a week, the date of the order is to be excluded in computing the week allowed to put in the deficit court fees, *Gopal* v *Bahorni*, 15 C. L. J 120 Where the order was to supply the deficit Court Fees within a month otherwise the appeal will stand dismissed, but the last day, of the time allowed fell within a holiday and the Court Fees were supplied on the reopening date, held that the Court Fees were supplied in time, *Amir Mondal* v. *Mohan Chandra*, I. L. R. 3 Pat. 337.

Admission of Appeal—Subject to Objection.—Order of appeal court excusing delay in payment of court fees on a memorandum of appeal, is according to the practice of the Madras High Court, made subject to objection at the hearing, *Acharath Parakhat* v *Acharath Bappu*, 23 Ind Cas. 949. An order under 148 C. P. C. is not an order admitting or rejecting a plaint, *Budhan Sha* v. *Sitanath*, 13 C. L J. 78: 7 Ind. Cas 58.

Power of Appeal Court to Interfere with the Orders of the Lower Court in Extending the Time—When a judge passes an order under Section 149 of the Code of Civil Procedure, it is to

be considered that he has exercised his discretion as provided by Section 149 C. P C and an appellate court cannot interfere with the exercise of such discretion, *Priyanath* v. *Meajan Sardar*, 24 C. L J 88: 29 Ind Cas 571, *Ramlall* v. *Khudattunnissa*, 12 A L J 709: 23 Ind Cas 408; *Jai Singh Gir* v *Sita Ram Singh*, 74 Ind Cas, 757

An appeal court can neither extend the time fixed for payment of court fees nor reduce the period within which it is ordered to be given Sections 148 and 149 C. P. C do not give the power either jointly or separately, *Nathersa Rowther* v. *Mahomed Rowther*, 28 Ind Cas. 890

Remedy in case of an order for rejection —Where an order for rejection has been passed, the Court cannot order restoration of appeal either under Section 151 C P. C or under order IX rule 9 C P. C The remedy is by an application for review. *Rameshwardhari Singh* v *Sadhu Saran Singh*, I. L R 2 Pat 504

Power of appeal Court to reject memorandum of appeal for nonpayment of proper court fees in time.—It is doubtful whether the courts can at once reject the plaint for insufficiency of court fee Section 54 (b) of the Code of Civil Procedure (Act XIV of 1882) requires that the plaint is to be rejected if the plaintiff fails to put in court fees within the time fixed by the court, (also *vide* Or 7, r 11 of the present code, Act V of 1908) In the case of *Moti Sahu* v *Chhatri Das*, 19 Cal 780, the Calcutta High Court said "that the courts are at liberty to extend period for completing the formalities requisite to make a plaint a regular plaint, so as to be registered in the court to which it is presented when written on a paper insufficiently stamped, is shown by Section 54 of the Code of Civil Procedure. Clause (*b*) of that Section enables a court to fix a time within which the requisite stamp paper is to be furnished and provision made that if this indulgence is not taken advantage of, the plaint shall be rejected "

"If the requisite stamp paper is put in, and the plaint is otherwise regular, it is admitted and registered Section 4 of the Limitation Act requires that every suit shall be instituted within the period prescribed therefor by the second Schedule of the Act, and the explanation set out (for the purpose of limitation), a suit is instituted in ordinary cases when the plaint is presented to the proper officer *There is thus a distinction recognized between presentation of a plaint within Section 48 of the Code of Civil Procedure, and its admission, after the requisite formalities, including the payment of necessary court fees, shall have been completed.*"

Where a court finds that a plaint or a memorandum of

appeal is filed with insufficient court fees, the correct procedure is to call upon the plaintiff or appellant to make good the deficiency and on failure to do so, to enforce its order by dismissal of suit or appeal, *Brij Krishna Das*, v. *Murti Rai*, 4 Pat. L. J. 703: 56 Ind. Cas 316. See also *Padmananda* v. *Ananta Lal*, 34 Cal. 20: 11 C. W. N. 38: 4 C. L. J. 422 F. B.

The provisions of order 7 rule 11 are mandatory, and they require that where a plaint is written upon paper insufficiently stamped, the court is bound to give the plaintiff time to make good the deficiency. *Radha Kanta Saha and others* v. *Debendra Narain Saha and others*, 49 Cal. 880; 27 C W. N. 567; 28 C. L J 74; 70 Ind. Cas. 101, 1922 A. I R. 506 (Calcutta) See also *Achuta Ram Chandra* v *Nagappa*, 38 Bom. 41; 15 Bom. L R. 902; 21 Ind. Cas 337.

Power of Deputy Registrar to return Memorandum of Appeal.—The Deputy Registrar of the High Court has no power to return the memorandum of appeal for insufficiency of court fees paid on it The right course for that officer is, when his request to make good the deficiency is not complied with, to lay it before the court and if the party is willing to pay them, the Deputy Registrar is to receive the same and if the time has expired to lay it before the court, *Syad Ambur Ali* v. *Kali Charan*, 24 W. R 258.

Deficiency of Court Fees not Raised in the Trial Court. —Where the deficiency of court fees was not objected to in the first court by the defendant before the decision of the suit, such plea could not be raised for the first time in appeal, *Wilayat* v. *Umardaraz Ali Khan*, 19 All. 165. Where defendant did not raise the question of court fees and valuation in the written statement, the Judicial Committee of the Privy Council declined to entertain the objection on appeal as to the jurisdiction of the trial court and observed that the same should not have been allowed to be taken in appeal, and that the Court Fees Act was not passed to arm a litigant with a weapon of technicality against his opponent, but to secure revenue for the benefit of the state.........And a judgment not shown to have been wrongly decided to the detriment of revenue cannot be set aside at the instance of a party on the ground of jurisdiction, *Rachapa Sudrao Jadhav Desai* v. *Shidappa Venkatrao*, 24 C. W. N. 33: 29 C. L. J. 452: 50 Ind. Cas. 280: 34 Bom. 507; 21 Bom. L. R. 459: 17 A. L. J. 418: 25 M. L. T. 298: 36 M. L. J. 437 P. C

Question as to court fees not raised in the lower appellate court, not allowed to be taken in second appeal, see *Ram Kishen* v. *Dipa*, 13 All. 580, *Ahmad Ali* v. *Waris Hossain*, 15 All. 123, *Wilayat Ali* v. *Umardaraz Ali*, 19 All. 165, *Ranga Pai* v. *Baba*,

20 Mad. 398, *Sharan Bibi* v. *Earsin Dewan*, 16 Ind. Cas. 46; but see *contra, Kasturi Chetty* v. *Deputy Collector, Bellary* 21 Mad. 269.

Effect of acceptance of decision by the trial court.—Where the defendant had accepted the decision of the trial court as to the amount of court fees payable and had stamped his own appeal to the lower appellate court in the same way, he is precluded from raising the question of court fees again in the High Court. *Chunnu Lal* v *The Bank of Upper India*, 106 P. W. R. 1917 40 I C 904, but the fact that a certain sum was put in in compliance with the order of court, did not preclude the plaintiff from afterwards disputing the decision of the court in appeal *Mani Lal* v. *Durga Prasad*, 3 Pat. 920; 80 I. C 667, 1924 A I R. 673 (P.).

See also Section 11 of the Suits Valuation Act (Act VII of 1887) where the circumstances under which the courts are to take such questions into consideration are specified.

Effect of Registration —The mere fact that the plaint or memorandum of appeal has been registered does not prevent the question as to sufficiency of Court Fees being raised at a later stage. *Radha Kanta Saha* v. *Debendra Narain Saha*, 49 Cal 880, 27 C. W. N. 567: 1922 A. I. R 506 (Calcutta); 38 C L J 74 70 Ind Cas 101.

Effect of decision of Court —When a plea of insufficiency is taken all that the court is to do, is to see whether the court fees paid already is sufficient having regard to the various allegations in the plaint and in doing so does not decide that those allegations are true, *Lalta Prasad* v. *Barmha Din*, 30 Ind. Cas. 73

Amendment of Pleadings.—See Code of Civil Procedure (Act V of 1908), Sec. 153 and Or. 6, r 17 and r. 18, as to the power of court to amend pleadings and Or. 14, r 5, as to the power of court to amend issues. As to power of appellate court, see Section 107 (2) and Section 108 of the Code of Civil Procedure.

Order 6 r. 17 of the Code of Civil Procedure authorises the court to allow, at any stage of the proceedings an amendment of the pleadings in such manner and on such terms as may be just and renders it obligatory upon the court to allow all necessary amendments for the purpose of determining the real matter in dispute between the parties. "In this case the suit was for an injunction on the ground that the decree was fraudulent, and an amendment was allowed setting out an alternative ground in support of the injunction that the decree was inoperative against the plaintiff.

Held, amendments must not be allowed to prejudice the substantial rights of the party in favour of whose opponent the amendment is allowed and if the party applying is acting *malafide* or by his blunder has done some injury to his opponent which cannot be compensated for by costs or otherwise, *Mani Lal* v. *Harendra Lal*, 12 C. L. J. 556. The court allowed amendment by insertion of another prayer in the following cases: *Bai Anope* v *Mulchand Girdhar*, 9 Bom. 353 (insertion of a prayer for accounts) *Sardar Singhji* v. *Ganpat Singhji*, 14 Bom. 395 (prayer for injunction inserted) *Abdulkadar* v. *Mahomed*, 15 Mad. 15, (prayer for possession inserted).

But where the objection is not taken for the first time in appeal and the plaintiff elected to take an issue and to allow the suit to proceed subject to the risk of an adverse decision, the court refused to allow amendments, *Narayana* v. *Shankunni*, 15 Mad, 255 Where the Plaintiff had an opportunity but did not avail himself of it, the court refused to allow amendment, *Raj Narayan* v *Shama Nanda*, 26 Cal 845 Where the plaintiff has put a *bona fide* valuation on his claim, he cannot afterwards be allowed to alter the valuation, especially if the effect of such valuation be to oust the jurisdiction of the court; but such *bona fide* valuation would not affect the plaintiff's rights to recover a larger amount if such amount be, on enquiry, found due to the plaintiff *Arogya* v. *Appachi*, 25 Mad. 453: 14 M. L J 35. The proper valuation in the case of an amended plaint is that ascertained at the date of the original filing of plaint, *Moro Biswanath* v. *Ganesh Vithal*, 10 Bom. H. C. A. C. 444, *Khelit Chunder* v *Nasseebunnissa*, 16 W. R. 47.

Power of Appeal Court to allow amendment.—Appeal Court cannot give option to the plaintiff to limit his claim to the extent of court fees paid, *Valli Ise Amanji* v *Mahmad Adam*, 16 Bom L R 763 · 26 Ind. Cas 746. The Chief Court (Burma) refused to allow amendment of the valuation, so as to bring the valuation within the jurisdiction of the Chief Court, *Thein Yin* v. *Foucar Brothers Co., Ltd.*, 4 L B. R. 120; but if the plaintiff at the initial stage of suit abandons a portion of his claim, he can not be compelled to pay court fees upon that claim under the penalty of having his whole claim dismissed, *Ram Prosad* v. *Bhiman*, 27 All. 151 24 A. W. N. 198: I. A. L. J. 577. The Punjab Chief Court allowed the Defendant-Appellant, who had filed an appeal insufficiently stamped, to abandon a part of his claim in appeal and to restrict the dispute to the amount on which he paid court fees, *Duni Chand* v. *Abdul Aziz*, 131 P. L. R. 1911: 10 Ind Cas. 207.

Suit by Paupers.—See XXXIII, rr. 8, 11 and 12 of the Code of Civil Procedure (Act V of 1908). For *Pauper appeals*—see Or. XLIV of the Code of Civil Procedure (Act V of 1908).

As to Procedure after the application is admitted.—See Or. XXXIII, r 8; all court fees in respect of the suit are excused but not fees in respect of service of processes.

In case the full court fee is paid subsequently either during the pendency of the enquiry into pauperism or after the rejection of the petition to sue as pauper but within time allowed to pay the court fees, the suit is to be considered as instituted on the day the petition to sue as pauper was presented, *Skinner* v. *Orde*, 2 All. 241 L R 6 I A 126 4 C L R 331; *Janakdhary* v. *Janki*, 28 Cal. 427, *Saan Tee* v *Ma Ngwe*, 9 Bur L T. 69 32 Ind Cas 630, *Jamnabai* v *Vissondas*, 21 Bom. 576, *Bai Ful* v. *Desai Manorbhai*, 22 Bom 849 See *contra*, *Keshav Ram Chandra* v *Krishnarao*, 20 Bom 508 In *Alayakamma* v. *Subbaraya*, 28 Mad 493 15 M L J 219, it was held that "the payment of stamp duty, however, relates back to the date of presentation of the plaint, as a proper plaint, in the absence of any evidence to show that there was fraud in putting the plaint without a stamp"

Defence formá pauperis—Although there is no provision in the Code of Civil Procedure, a court has power to allow a defendant to defend in *formá pauperis*—as the power to allow is not taken away by the Code and the Court can exercise such power, *Doorga Charan* v *Nittokally*, I L R 5 Cal 819 6 C. L R. 120.

Cross-objection—See Or XL, r 22 proviso of the Code of Civil Procedure 1908 An application for leave to file a petition of cross-objection in *formá pauperis* can be entertained under the Code of Civil Procedure, *Gobinda Ram* v *Radha Ballabh*, 12 C. L. J. 173

Review—When an application for review is presented in a suit in *formá pauperis*, that application is not liable to any court fee, *Kunda Bibi* v. *Naina Bibi*, 20 All 410 18 A W. N. 95. But in Punjab unless a petitioner has been declared a pauper in a previous stage of suit or appeal, he cannot file a review *formá pauperis*, *Karom Khan* v *Buta Khan*, 91 P R 1895.

Recovery of Court Fees by Government in Pauper Suits. The Government cannot attach and sell the decree itself in favour of the pauper plaintiff to realize the court fees due to it: Sections 273 and 284 (Or XXI, rr 53 and 64) do not contemplate such a sale, *Jatindra* v *Dwarka*, 20 Cal 111.

An application for leave to file a suit *formá pauperis* was filed before the amendment of the Court Fees Act and leave was granted after the amended act came into operation. The suit was decreed and on the question as to the amount of Court fees to be realized by Government, held that the plaint must be deemed to have been presented on the date the application for

time was presented, hence court fees are payable on the old scale and not under the Amended Act. *Kaman Tada and others* v. *Malli and another*, 49 M L J. 538

Precedence.—See Or. XXXIII, r 10 C. P. C. (Act V of 1908) and Section 411 of C P C. (Act XIV of 1882), which have been construed to mean that "though it indicates the manner in which Crown may proceed to realize the debt (court fees), it does not precluded the Crown or its representative from urging its prerogative and insisting on its right to precedence over all other creditors, *Gyanadabala* v. *Butta Kristo*, 33 Cal. 1040: 10 C. W N 857 (861) The *Collector of Krishna* v. *Gajjala Sreeramamoorthy*, 80 I. C 935.

The right of precedence of the Crown was recognized in the following cases, *Gunpat Putaya* v. *The Collector of Kanara*, 1 Bom. 7; *Gulzari Lal* v *The Collector of Barielly*, 1 All. 596; *The Collector of Moradabad* v. *Muhammad Daim*, 2 All. 196, *Ramdas* v. *The Secretary of State*, 18 All. 419 16 A. W. N. 121.

Separate suit—Government need not bring a separate suit; but where the sale of a portion is subject to a mortgage, then the claim of the mortgagee is superior to the claim of the Government as the property of the mortgagor is liable to pay court fees and not that of the mortgagee, *Dost Muhammad* v. *Mani Ram*, 29 All 537: 27 All W. N 157· 4 A. L. J 720.

Mode of Realization—The Crown is entitled to recover court fees as a charge upon the property in possession of the successful plaintiff in a pauper suit, if its attempts to recover the same from the Defendant personally fail. This may be done by an application in the proceeding under Or. XXXIII, rr. 10 and 13 and not by a separate suit, *Babu Girija Kuar* v. *Secretary of State*, 4 Pat. L. J 166. The Collector can not sell the decree in favour of the successful plaintiff, *Jatindra Nath* v. *Dwarka Nath*, 20 Cal. 111; *Sultan Koer* v. *Gulzari Lal*, 2 All. 290, *Tiruvengada* v. *Vythilinga*, 6 Mad. 418.

Character of Claim by Government—It is a first charge, order 33 rule 12. In a suit by wife claiming her dower debt against the mortgagee decreeholder of the properties of her husband, claiming priority over the mortgage, the wife obtained a money decree, and the Government claimed court fees under Section 411 C. P. C. (Act XIV of 1882) as a first charge and sold the properties in auction, and the sale for realization took place first. The Judicial Committee of the Privy Council said "The decree of 11th of May 1879 did not create or purport to create any charge on the mortgaged property in favour of the Government. The Government had no right to attach the property and sell it in execution under that decree, though of course, such interest, if any, as remained in the mortgagee from

whom the court fees were declared to be recoverable, might have been reached by a proper proceeding. The order for the first sale was, therefore, without jurisdiction, and the sale passed no property to the declared purchaser, *Ragho Prasad and others* v. *Lala Mewa Lal and others*, 15 C. L. J. 327 (331): 16 C. W. N. 433. 34 All. 223: 9 A. L. J. 401: 39 I. A. 62: 1912, M. W. N. 311: 22 M. L. J. 457: 13 Ind. Cas. 177. But where a portion of the subject matter of the pauper suit is sold to realize the dues of the Government in court fees, and purchased by the plaintiff, the claim by a purchaser in execution of a decree in a subsequent suit cannot prevail against the plaintiff as under Section 411 C. P C., the stamp fees recoverable by the Government is a first charge upon the property, *Puthia Valappil* v *Veloth Assenar*, 25 Mad. 733. If there is nothing due to Government in court fees an order for sale and a sale under that order is *ultra vires* and a nullity, *Balwant* v. *Muhammad Hussain*, 15 All 224.

Right of Government not barred by lapse of time.—The right of Government to recover stamp fees in a successful pauper suit is not barred by any lapse of time, *Shami Mohammad* v. *Munshi Mohammad*, 2. B L. R. App. 22.

Appeal by Government—In case of an adverse order in realization of court fees, the Government can appeal to a higher court under Section 47 C. P C as if the Government was a party to the suit, see Order XXXIII r C. P. C This rule sets at rest the difference of opinion of several High Courts as to the power of Government to file an apppeal against an adverse order

When can the Government claim the court fees and costs?—Where no enquiry was made as to the pauperism of a minor Plaintiff who was not properly represented by a next friend, no costs would be given against the estate of the minor and if passed, the order is *ultra vires* and illegal, *Amirchand* v. *Collector of Sholapur*, 13 Bom 234

Portion of Plaintiff's Claim Allowed—Where in a suit brought in *formâ pauperis*, the suit was partly decreed and partly dismissed and the trial court ordered in awarding costs against Defendant, that the Defendant should pay the entire amount of court fees payable on the plaint, *held* that court fees payable on the plaint should have been apportioned between the Plaintiff and the Defendant in accordance with their respective success, *Chandrareka* v *Secretary of State*, 14 Mad 163 followed in *Ganga* v *Musst Goura*, 38 All 469: 14 A L J 657: 35 Ind Cas. 46 Where a portion of the claim is allowed, the Government is only entitled to so much amount in court fees as is payable on the amount decreed, *Chandrareka*

v *Secretary of State*, 14 Mad. 163. See *Janki* v. *Collector of Allahabad*, 9 All. 64: 6 All W. N. 300.

Compromise.—The word "failed" in Section 412 C. P. C. (Or. XXXIII, r. 12) applies only to the cases of adjudicated failure, therefore the party who compromises suit without trial is not liable to pay court fees, *The Collector of Kanara* v. *Krishnappa*, 15 Bom. 77 See also *Bai Chandaba and another* v. *Kuver Shaheb*, 18 Bom. 464. But these authorities were modified by a Full Bench of Bombay High Court in the case of *Secretary of State* v. *Bhagirathi Bai*, 31 Bom. 10: 8 Bom. L. R 689, where the Plaintiff was ordered to pay court fees when he withdrew his suit without leave as the result of compromise, see also *Balawant Singh* v. *Roshan Singh*, 18 All. 253 (255), *Reference under Court Fees Act*, 4 M L J 98.

Withdrawal of Suit—See Or XXXIII, r 11 C P. C. (Act V of 1908). Where a pauper plaintiff withdraws a suit with liberty to bring a fresh suit, he is liable to pay court fees to Government, *Secretary of State* v *Narayan*, 29 Bom. 102. See also *Secretary of State* v *Bhagirathi Bai*, 31 Bom. 10: 8 Bom. L. R 689

Dismissal of Suit by Pauper without trial—A plaintiff who has filed a suit *formá pauperis* is liable to pay court fees even if the suit be dismissed without trial, *The Collector of Vizagapatam* v. *Abdul Karim and other*, 12 Mad. 113 8 M L J 4; *The Collector of Trichinopoly* v. *Sivaramakrishna*, 23 Mad 73 9 M L. J 265 See *contra*—*The Collector of Canara* v. *Krishnappa*, 15 Bom 77.

Return of Pauper Plaint.—Where the plaint was returned to be presented to proper court and the court ordering the return ordered the Plaintiff to pay court fees, the High Court in revision set aside that order, *Collector of Ratnagiri* v. *Jandraan*, 6 Bom 590

Appeal in Formá Pauperis.—See Or. XLIV C P. C. (Act V of 1908) Where the appeal was admitted and registered without objection by the opposite party and a deficiency in court fees was subsequently discovered, the Appellant was allowed to make good the deficiency and it was held that the appeal was in time, *Durga Charan* v. *Dookhiram*, 26 Cal. 925; *Seva Dutt* v. *The Collector of Lahore*, 144 P. W. R. 1909.

Power of Collector.—The Collector of a district may, on sufficient grounds, remit the court fees recoverable by Government from any party, after judgment, *B. G. R. No. 3945 dated 14th September, 1877.*

Payment of Court Fees after Limitation in Pauper Suits.—The Plaintiff field an appeal in *formá pauperis* in time, valuing

his appeal at Rs. 2,500 instead of Rs. 230 on which he paid court fees in the trial court and the District Judge directed the Sub-Judge to enquire into pauperism and held that the value is the correct value and the Plaintiff paid the court fees within time allowed, the High Court *held* that the appeal is not time barred, *Bai Ful* v. *Desai Manorbhai*, 22 Bom. 849 (850). An application for leave to sue *forma pauperis* accompanying an unstamped memorandum of appeal, filed in time, was rejected by the District Court within the X'mas vacation. On the re-opening day of the District Court, the Appellants applied for and obtained leave of court to pay the requisite court fees within three weeks, and paid the court fees within that time *held* that the appeal was in time and must be deemed to have been filed on the original date of filing, and that the rejection of application to present the appeal *formá pauperis* does not lead to a dismissal of appeal and that the appellate court has power under Sections 148 and 149 C P. C. to grant extension of time (22 Bom 880 followed). *Nalladiva* v *Subramania Pillai*, 40 Mad 687, 31 M. L. J 269. See also, *Patcha Shaheb* v *The Collector of North Arcot*, 15 Mad. 78, *Maria Thangathammal* v. *Iravathiswara Iyer*, 1915 M W N 228, *Raja Ram* v *Tilock Chand*, 30 P L. R 1903, *Swan Tee* v *Ma Ngwe*, 9 Bur L T. 69; 32 Ind Cas 630; *Janakdhary* v. *Janki Koer*, 28 Cal 427; *Durga Charan* v. *Dookhiram*, 26 Cal. 925 *Skinner* v *Orde* P. C. 2 All 241; L R 6 I. A. 126; 4 C L R 331.

There can be no objection to a petition to sue in *formá pauperis*, which has not been granted, being registered as a plaint in the suit on full fees being paid The suit ought not to be dismissed for non-payment of costs incurred by Government in opposing the petition, when no demand for its payment was made at any time either on behalf of Government or by Court, although payment of such costs is a condition precedent under Section 413 of the Code of Civil Procedure, (Act XIV of 1882), *Mrinalini Devi* v. *Tinkouri*, 16 C. W N 641, 14 Ind Cas 297 *See contra Aubhaya Charan* v *Bissesswari*, 24 Cal. 889, where it was held that when an application for permission to sue *formá pauperis* is rejected and a full court fee is paid for the same relief, the suit for the purpose of limitation, must be deemed to have been instituted when the full court fee was paid and not at the date of presentation of petition for permission to sue in *formá pauperis* See also *Hari Singh* v. *Gur Baksh*, 130 P. L R. 1909: 94 P R. 1909 95 P. L. R. 1909

Court Fee Payable in Application for Execution.— Court Fee is payable on such an application, see under Art. 1, Schedule II of the Act

Appeal from Order.—See Article 11 of the second schedule of this act and the cases collected under that Article.

Remand Orders.—The memorandum of appeal in an appeal from remand order is to be stamped under Art. 11, Schedule II of the Court Fees Act. See cases under Art. 11, Schedule II. But where a suit for possession was dismissed by the First Court and on appeal the lower Appellate Court decreed the suit holding that the Plaintiff is entitled and sent back the case to the first court for ascertainment of mesne profits, *held* that the appeal presented to the High Court was an appeal from appellate decree and the memorandum should be stamped with an *ad valorem* court fee, *Raghunath* v. *Jhari Singh*, 3 Pat. L. J. 99· 45 Ind Cas 100 A suit for the recovery of arrears of rent was dismissed by the trial court on the merits On appeal the District Court set aside the decision of the trial court and remanded the case for the determination of the amount of rent payable The Defendants appealed to the High Court against the order of remand, *held* that the appeal was from an appealable decree and not from an order. So the memorandum of appeal must bear an *ad valorem* court fee stamp, *Pandit Singh* v *Kode Narain Singh*, 50 Ind. Cas. 367 (Patna).

Computation of fees payable in certain suits—

7. The amount of fee payable under this Act in the suits next hereinafter mentioned shall be computed as follows:—

for money;

(i) In suits for money (including suits for damages or compensation, or arrears of maintenance or annuities, or of other sums payable periodically)—according to the amount claimed;

for maintenance and annuities;

(ii) In suits for maintenance and annuities or other sums payable periodically—according to the value of the subject-matter of the suit, and such value shall be deemed to be ten

times the amount claimed to be payable for one year;

(iii) In suits for movable property other than money, where the subject-matter has a market-value—according to such value at the date of presenting the plaint:

moveable property having a market-value.

(iv) In suits—

(a) for moveable property where the subject-matter has no market-value, as, for instance, in the case of documents relating to title,

for moveable property of no market-value;

(b) to enforce the right to share in any property on the ground that it is joint-family property,

to enforce a right to share in joint family property,

(c) to obtain a declaratory decree or order, where consequential relief is prayed,

for a declaratory decree and consequential relief;

(d) to obtain an injunction,

for an injunction,

(e) for a right to some benefit (not otherwise provided for) to arise out of land, and

for easements,

(f) for accounts

for accounts,

according to the amount at which the relief sought is valued in the plaint or memorandum of appeal.

In all such suits the plaintiff shall state the amount at which he values the relief sought.

(v) In suits for the possession of land, houses, and gardens—according to the value of the subject matter; and such value shall be deemed to be—

for possession of lands, houses and gardens;

where the subject-matter is land, and—

(a) where the land forms an entire estate, or a definite share of an estate paying annual revenue to Government,

or forms part of such an estate, and is recorded in the Collector's register as separately assessed with such revenue

and such revenue is permanently settled—ten times the revenue so payable;

(b) where the land forms an entire estate, or a definite share of an estate paying annual revenue to Government ,or forms part of such estate, and is recorded as aforesaid; and such revenue is settled, but not permanently—five times the revenue so payable:

(c) where the land pays no such revenue, or has been partially exempted from such payment, or is charged with any fixed payment in lieu of such revenue,

and nett profits have arisen from the

land during the year next before the date of presenting the plaint—fifteen times such nett profits;

but where no such nett profits have arisen therefrom—the amount at which the Court shall estimate the land with reference to the value of similar land in the neighbourhood,

(d) where the land forms part of an estate paying revenue to Government, but is not a definite share of such estate, and is not separately assessed as above mentioned—the market-value of the land:

Proviso as to Bombay Presidency

Provided that, in the territories subject to the Governor of Bombay in Council, the value of the land shall be deemed to be,—

(1) where the land is held on settlement for a period not exceeding thirty years, and pays the full assessment to Government,—a sum equal to five times the survey-assessment;

(2) where the land is held on a permanent settlement, or on a settlement, for any period exceeding thirty years, and pays the full assessment to Government—a sum equal to ten times the survey-assessment, and

(3) where the whole or any part of the annual survey-assessment is remitted—

a sum computed under paragraph (1) or paragraph (2) of this proviso, as the case may be, in addition to ten times the assessment or the portion of assesment, so remitted :

Explanation.—The word "estate," as used in this paragraph, means any land subject to the payment of revenue, for which the proprietor, or farmer or raiyat, shall have executed a separate engagement to Government, or which, in the absence of such engagement, shall have been separately assessed with revenue;

for houses and pre-emption;

(e) where the subject-matter is a house or garden according to the market-value of the house or garden;

to enforce a right of pre-emption;

(vi) In suits to enforce a right of pre-emption according to the value (computed in accordance with paragraph v. of this section) of the land, house, or garden in respect of which the right is claimed :

for interest of assignee of land revenue;

(vii) In suits for the interest of an assignee of land-revenue—fifteen times his nett profits as such for the year next before the date of presenting the plaint :

to set aside an attachment;

(viii) In suits to set aside an attachment of land or of an interest in land or revenue—according to the

amount for which the land or interest was attached:

Provided that, where such amount exceeds the value of the land or interest, the amount of fee shall be computed as if the suit were for the possession of such land or interest;

(ix) In suits against a mortgage for the recovery of the property mortgaged,

to redeem,

and in suits by a mortgagee to foreclose the mortgage, or, where the mortgage is made by conditional sale, to have the sale declared absolute—

to foreclose,

according to the principal money expressed to be secured by the instrument of mortgage:

for specific performance;

(x) In suits for specific performance—

(a) of a contract of sale—according to the amount of the consideration:

(b) of a contract of mortgage—according to the amount agreed to be secured,

(c) of a contract of lease—according to the aggregate amount of the fine or premium (if any) and of the rent agreed to be paid during the first year of the term:

(*d*) of an award—according to the amount or value of the property in dispute:

between landlord and tenant.

(xi) In the following suits between landlord and tenant:—

(*a*) for the delivery by a tenant of the counterpart of a lease,

(*b*) to enhance the rent of a tenant having a right of occupacy,

(*c*) for the delivery by a landlord of a lease,

(*cc*) for the recovery of immoveable property from a tenant, including a tenant holding over after the determination of a tenancy,

(*d*) to contest a notice of ejectment,

(*e*) to recover the occupancy of ["immoveable property"] from which a tenant has been illegally ejected by the landlord, and

(*f*) for abatement of rent:—

according to the amount of the rent of the ["immoveable property"] to which the suit refers, payable for the year next before the date of presenting the plaint.

NOTES.

Amendments.—The words 'and the provision of the Code of Civil Procedure, section thirty-one, shall apply as if for the word 'claim' the word 'relief sought' were substituted"

were repealed by the Repealing and Amending Act, 1891 (Act XII of 1891), in paragraph iv, of this Section.

The clause (cc) in paragraph xi. was inserted by the Court Fees (Amendment) Act, 1905 (VI of 1905), Section 2 (1).

The words "immoveable property" in paragraph xi. (e) were substituted for the word "land" by Section 2 (2) of the Court Fees (Amendment) Act, (VI of 1905)

Local Amendments.—This section has been amended in Assam, Bengal, Madras, Bombay and Patna, C. P and Punjab For these Amendment Acts, *vide* Appendices *infra.*

Valuation.—Civil Courts Acts of the various Provinces confer jurisdiction on several grades of Courts established in the country based on the valuation for jurisdiction by the Plaintiff. The Code of Civil Procedure (Act V of 1908) in Section 15 also enacts that every suit shall be instituted in the court of the lowest grade competent to try it and Section 21 of the present Code of Civil Procedure lays down that objection to the exercise of jurisdiction shall be taken at the earliest opportunity and even as regards Court Fee matters, (43 Bom 507 23 C W. N 33) The question cannot be raised afterwards, (24 Mad 298 and 21 Mad 269) Valuations regarding suits for lands are to be regulated by Part I of the Suits Valuation Act, which confers upon the Local Government, subject to the control of the Governor-General in Council, powers to make rules for the purpose of determining the values of the land for the purpose of jurisdiction in suits mentioned in the Court Fees Act (Act VII of 1870), Section 7, paragraphs v. and vi. and paragraph x (*d*) Suits under Section 7, paragraph iv or Schedule II Art 17 of the Court Fees Act (Act VII of 1870) so far as they relate to land are to be governed by the rules framed under Section 4 of the Suits Valuation Act, (Act vii of 1887) and the plaintiff is not entitled to put a higher valuation on the suit than what is covered by his interest in the litigation, *Narayan Singh* v *Aiyasami Reddi*, 39 Mad 602 (603) Part II of the Suits Valuation Act deals with suits other than lands Section 8 of the Suits Valuation Act says that in suits under Section 7 other than those mentioned in paragraphs v , vi , ix and Clause (d) of paragraph x , the valuation for the purposes of jurisdiction and of Court Fees shall be the same, and Section 9 says that if in the opinion of the High Court the subject matter of any class of such suits does not admit of being satisfactorily valued then such High Court with the previous sanction of the Local Government is to direct that suits of that class be treated as if the subject matters were of such value as the High Court thought fit to specify. When rules are so framed then the

valuation for suits other than those in Section 7, paragraphs v., vi. and Clause (d) of paragraph x. of the Court Fees Act will be supplanted and Court Fees *ad valarem* on the valuation so fixed will have to be paid, *Ganpatrao* v. *Laxmi Bai*, 15 N. L. R. 84; 43 Ind. Cas. 64.

Valuation for the purpose of Jurisdiction.—For the purpose of jurisdiction the valuation should be according to the market value of the subject-matter of suit and not according to the provisions of the Court Fees Act, *Jeebraj* v. *Inderjeet*, 18 W. R. 109: 12 B. L. R. 115 notes; See also *Nanhoon Singh* v. *Toofanee*, 20 W. R. 39: 12 B. L. R. A. C. 113; *Chandernath* v. *Brindaban*, 25 W. R. 39 The valuation of the subject matter of suit for the purpose of jurisdiction and the valuation for the purpose of Court Fees are two different things. The valuations for the purpose of stamp duty are fixed by artificial rules, while the valuation on which depend the jurisdiction of the several grades of Courts is the actual value of the property in litigation, *Aukhil Chunder* v. *Mohiny Mohan*, 5 Cal. 489 4 C. L. R. 491 See also *Kirty Churn* v. *Aunath Nath*, 8 Cal 757 11 C. L. R. 95.

In those class of cases where, for example, the class of suits indicated in Section 7, paragraph xi of the Court Fees Act, the Courts Fees Act itself enacts the method of calculation of Court Fees, then according to Section 8 of the Suits Valuation Act, the artificial value is to govern the valuation for jurisdiction This is only where there is conflict with the provisions of Court Fees Act and the provisions of Suits Valuation Act. In *Sailendra* v. *Ram Charan*, 25 C. W. N. 768: 34 C. L. J. 94, the High Court said: "The procedure to be adopted in cases of this character is obvious; *first*, value the suit for payment of Court Fees in accordance with the rule embodied in Section 7, Sub-Section (x) Clause (c) of the Court Fees Act; then, adopt the valuation so *determined for* the purpose of Court Fees, as the value for purposes of jurisdiction" See also *Hari Sanker and others* v. *Kali Kumar*, 32 Cal 734 · 9 C. W. N. 690; *Bai Varunda Lakshmi* v. *Bai Manigavri*, 18 Bom. 207; *Velu Goundan* v *Kumara Velu*, 20 Mad 289. According to the above criterion, when it happens that the suit is not instituted in the Court of lowest grade competent *to try it*, Section 11 of the Suits Valuation Act saves the litigant, *Sailendra* v. *Ram Charan*, 25 C. W. N. 768: 34 C. L. J. 94 (96); *Nidhi Lal* v. *Magha*, 7 All. 230; *Matra Mandal* v. *Hari*, 17 Cal. 155. But in *Nanak* v. *Gurandilla*, 63 P. R. 1902, it was held that Section 8 of the Suits Valuation Act so far governs Section 7 of the Court Fees Act as to indicate that it was not the intention of the legislature that a Plaintiff would be able to put an arbitrary value

on the suit, and therefore in a suit for injunction without damages, the Court Fee payable is on the valuation for jurisdiction within the limits of the rules under Section 9 of the Suits Valuation Act.

The Court Fees Act is not to be resorted to for the purpose of the valuation of the subject matter of suits. (*Dayachand* v. *Hemchand*, 4 Bom. 515; *Rupchand* v. *Balvant Narayan*, 11 Bom. 511, *Amrita* v. *Naru*, 13 Bom. 489, *Bai Meher* v. *Magan Chand*, 29 Bom. 96.) But this can only happen where the provisions of Section 8 of the Suits Valuation Act do not require the valuation for the purpose of jurisdiction and valuation for the purpose of Court Fees, to be identical. The plaint alone is to be considered and not subsequent circumstances in the valuation of a suit. *Rajabala Dassi* v. *Radhacacharan*, 40 C. L. J. 150, A. I. R. 969 (Cal.).

Different Valuation—If different valuations are made one for the purpose of jurisdiction and the other for the purpose of Court Fees, the plaintiff should at once be called upon either to amend the valuation so as to bring the case within the special jurisdiction or take back the plaint to be presented to proper court; but if the defendant did not raise any objection at trial and the court proceeded to judgment then no objection can be raised at a later stage. *Balkrishna Narayan* v *Jankibai*, 44 Bom. 331; 22 Bom. L. R. 289; 57 I. C. 340.

Conflict of Section 7 of the Court Fees Act with Section 8 of the Suits Valuation Act—In case of Conflict of Section 7 of the Court Fees Act with Section 8 of the Suits Valuation Act, "the right construction of Section 8 of the Suit Valuation Act is that the valuation for the purpose of jurisdiction should, in the cases mentioned there, follow and be the same as the valuation for Court Fees," *Sailendra* v. *Ram Charan*, 34 C. L. J 94: 25 C. W. N. 768

Valuation rests with Plaintiff—The valuation rests with the Plaintiff and not with the *Court*. *Golab Dai* v. *Jiwaneer*, 2 All. 320, *Ostoche* v. *Haridas*, 2 All. 869, *Jogal Kisore* v *Tale Singh*, 4 All 320, *Sheodeni Ram* v *Tulsi Ram*, 15 All 378; *Manohar Ganesh* v. *Bawa Ram*, 2 Bom 219; *Sardar Singi* v *Ganpat*, 17 Bom 56, *Bai Verunda* v *Bai Manigavri*, 18 Bom. 207, *Vachhani Keshabbai* v *Vachhani Nanubha*, 33 Bom. 307, 1 I C 108; 11 Bom L R 30 *Hari Sankar* v. *Kali Kumar*, 32 Cal 734, 9 C W N. 690, followed in *Jogendra* v *Toriatunnessa and others*, 35 C L J. 144; 62 Ind Cas 685, (1922) A. I R. 242 (Calcutta); *Jan Mahomad* v. *Masher*, 34 Cal. 352; 11 C W N 458: 5 C L J. 400; *Ram Ekbal* v. *Baledeo*, 19 C L. J 418; *Prahlad* v *Dwarka*, 14 C W. N 929; *Velu Gounden* v *Kumar Velu*, 20 Mad. 289; *Samiya* v *Minammal*, 23 Mad 490; *Guru Vaiamma* v.

Venkata, 25 Mad. 34; *Chinnammal* v. *Madarsa Rowther*, 27 Mad 180; *Sunderbai* v. *The Collector of Belgaum*, 43 Bom. 376; P. C. 23 C. W. N. 753 *Krishnarao* v. *Musst. Chandrabhagabai*, 79 I. C 668 (Nagpore) *Tayabally Abdul Hussain* v. *Messrs. James Finlay & Co.* 80 I. C. 969 (Sind).

The plaintiff is not entitled to put a higher valuation on the plaint for the purpose of jurisdiction and thereby obtain an adjudication from a superior court, but cannot make a lower valuation for the purpose of Court Fees in cases where such values should be equal, *Kandhaiya Ojha* v. *Musst. Jagrani Kuar* 46 All. 419, 22 A L. J. 349; 79 I. C. 258; *Sriram* v *Dataram*, 16 S. L R 109: 70 I C 852: 1922 A. I. R. (Section) 20

The Valuation should not be arbitrary.—The valuation should not be arbitrary but should be a reasonable valuation, *Motibhai* v. *Haridas*, 22 Bom. 315, *Baidyanath* v. *Makhan*, 17 Cal. 680; *Krishna Das* v. *Hari Charan*, 14 C. L. J. 47: 15 C. W. N 823: 10 Ind. Cas. 865, *Bepin* v. *Raj Krishna*, 40 Cal 245: 16 C L. J 94: 17 C W N 591. 17 I. C. 162. *Mohendra* v *Dinabandhu* 19 C. L. J 15, 21 Ind. Cas 771: *Rajabala* v. *Radhika Charan* 40 C. L J. 150, 1924 A. I. R. 969 (C) *Jagesh* v *Durga Prosad*, 36 All 500: 12 A. L. J. 844 24 Ind. Cas 679, *Shama Prosad* v. *Sheoparsan*, 2 Pat. L. W. 173 41 Ind Cas. 95, *Harichand* v *Jiwan Mal*, 255 P L R 1903: 28 P R. 1903 But in suits for accounts and *mesne* profits an approximate value is to be given, See Or. 7, r. 2, C P. C., and also *Manohar* v. *Bawa*, 2 Bom. 219; *Gulab* v *Abdul*, 31 Cal 365

The valuation of a suit for a declaration with a consequential relief must not be arbitrary and in case of a dispute as to valuation the court is to determine the value *Kalicharan* v *Shivshankar*, 79 I. C. 113; 1924 A. I R 295 (Nag.).

Where there is no basis for valuation.—Where there is no basis for a valuation the plaintiff may make an imaginary valuation but he must pay Court Fees on such valuation as the court may subsequently make. The valuation by the plaintiff must be reasonable. *Dipchand Dowlatram* v. *Firm of Permanand Chimandas*, 79 I. C. 582 (Sind).

Power of Court to revise the valuation.—The Court can revise the valuation if it is capricious and arbitrary, See *Umatul* v. *Musst. Nauji*, 11 C. W. N. 705: 6 C. L. J. 427: where the Calcutta High Court held that "it is not only within the power of the Court but it is also its duty to take action under Section 54 of the Code of Civil Procedure (Act XIV of 1882) if it is established that the valuation is improper."

But according to Madras High Court such a power is limited to cases mentioned in Section 9. The Madras High Court said that "the trial Court cannot refuse to accept the valuation, made by the Plaintiff under the sanction of verification, that amount at which he values the relief sought," nor can it revise "a power which is limited to cases provided for by Section 9 which relates to an estimate given by the Plaintiff of the annual nett profits of the land or the market value of the land, house or garden as mentioned in Section 7, paragraphs v and vi . . . Section ix provides *inter alia that* it is competent to the High Court with the previous sanction of Local Government to frame rules for the valuation of suits referred to in paragraph iv of Section 7 of the Act and for determining the jurisdiction of the Court and until such a rule is framed the valuation given by the Plaintiff cannot be revised, *Chinnammal* v *Madarsa*, 27 Mad. 480 14 M. L. J. 343, See also *Samiya* v *Minammal*, 23 Mad 490. 10 M. L. J. 240, *Guruvatayamma* v *Venkata Krishnamma*, 24 Mad. 34.

Allegations by the Plaintiff are to be considered and not the statements by the deft in the W S.—The valuation, generally, is the valuation by the Plaintiff; the plaint only is to be taken into consideration and not the statements by the Defendant in the written statement

"The Court has got to look at and see in each particular case what is the nature of the relief claimed and, for that purpose, it must look at the allegations that are contained in the plaint," *Bagala Sunaari* v. *Prasanna*, 21 C. W. N. 375 · 35 Ind Cas 797; *Manghammal* v *Tocaram*, 6 S L R. 72; 16 Ind. Cas. 773.

See also *Karuppa Tevar* v *Angammal and others* 51 M L. J 67; 96 I C 129, 1926 A. I R. 678 (Mad.), where it was held that for the purpose of ascertaining the court fee payable, the court must have regard to the allegations in the plaint. It is not material whether these have been denied or not in the written statement.

Alternative Relief.—Where the Plaintiff claims alternative relief, *i e*, he sues for one of the various reliefs, the largest value determines the amount of stamp. Section 17 does not apply to such a suit, *Kashinath v Govinda*, 15 Bom. 82, *Motigavri* v *Pranjivan*, 6 Bom 202, *Lachman* v. *Bahadur*, 16 O C 354

(See other cases under Section 17 *infra.*)

Scope.—Future *mesne* profits do not fall under Section 7, *Vithal Hari* v *Govind Vasudeo*, 17 Bom. 41

Application of Sec. 7.—Section 7 of the Court Fees

Act has no application in case of appeals in which no amount is claimed, *Kesavarapu* v. *Kotta*, 30 Mad. 96 16 M. L. J. 458 1 M. L. T 311.

The application of any particular clause of Section 7 must depend on the substance of the claim and not on the mere words used in the plaint *Adager Aiyangar and another*, 50 M. L. J 406, 1926 M W N. 777; 1925 A. I. R 1248 (Mad.).

Principle of determination of the nature of suit.—In order to determine the amount of Court Fees payable in a suit, the Court is to look at and see in each particular case what is the nature of the relief claimed, and for that purpose, it must look at the allegations that are made in the plaint, *Bagala Sundari* v *Prosanna*, 21 C W. N. 375: 35 Ind. Cas. 797, *Manghamal* v. *Totaram*, 6 S L. R 72 "For the right determination of the question at issue it is necessary to ascertain what are the object and the nature of the suit." *Bibi Phulkumari* v *Ghanshyam*, 35 Cal 202 P C 12 C. W. N. 169; 7 C. L. J. 36 See also *Pandit Brij Krishna* v. *Murli Rai*, 4 Pat L J. 403 "The question of Court Fee must be decided on the plaint, and though it is open to the Court to say that the plaintiff has really asked for a consequential relief though he was tried to conceal it by casting the reliefs in a particular form, it is not open to the Court to say that the plaintiff should have asked for a consequential relief and should have paid the proper fee as in such a suit" *Narayan Singh* v *Saiyid Dildar Ali Khan* 1925 A I R 210 (P.).

"The argument in substance is, that the scope of the suit is to be determined not upon the plaint but upon what may be the eventual allegations of the Defendant, with the result, that a dispute as to title raised not *bona fide* but merely as a sham, intended to delay and embarrass the plaintiff, converts the suit into one for declaration of title and recovery of possession. In our opinion, there is no substance in the contention," *Bidhata* v *Ram Chariter*, 12 C W N. 37 (40). But in calculating the amount of Court Fees to be paid on the memorandum of appeal, sometimes the decisions of the Courts below are taken into consideration. See *Rangamonee* v. *Jogendra*, 9 C. L. J. 128: 3 Ind. Cas 304; especially in those cases where the Court below finds that an attempt has been made to evade the stamp duty, *Chokalinga* v. *Achiyar*, 1 Mad. 40.

PARAGRAPH I.

Arrears of maintenance.—The court fee payable in a suit for money is on the a mount of arrears claimed, *Shahazadi*

Begum v *Mahbub Ali*, 42 All 356 · 18 A. L J 328 ; 55 Ind. Cas 809

Claims for Compensation.—In a suit for damages in default of obtaining accounts against the executor of the estate of his father the plaint is to be stamped with *ad valorem* Court Fees, *Ram Doolal* v *Gopal Kristo*, 16 W R 156

Specific Moveables or Compensation—Where A to whom a certificate of administration had been issued in respect of the property of a minor in the place of B whose certificate has been cancelled, such B in respect of certain property of the minor in the possession of B or the value of such property, *held*, that these are not "distinct subjects" within the meaning of Section 17 and the Court Fees payable in respect of the plaint is to be computed under Section 7 paragraph 1 of the Act according to total value, *Amarnath* v. *Thakur Das*, 3 All 131

Claims for Compensation and Damages based on Fraud.—Court Fee is payable on the approximate value made by the Plaintiff when he filed the plaint, he may pay after the decree the difference between the amount paid and the amount necessary, *Raghavaji* v *Annamalai*, 17 M L. J 625

Use and Occupation—Where the Plaintiff sued for possession and for damages for use and occupation by virtue of a deed of Condition of Sale which he fore-closed, the defendant in occupation of a house which he purchased after the execution of the deed of Conditional Sale but before fore-closure, *held*, that the Court Fees leviable in respect of the Claim is under paragraph 1 of Section 7, and Section 11 of the Act as regards the claim for use and occupation, *Chedi Lal* v. *Kirath*, 2 All 682.

Instalment Bond—In case of Instalment Bonds the Court Fee payable is on the amount claimed and not on the whole bond, *Sutto Bhama* v *Jameeruddi*, 4 W R S C. C 12.

(See other cases under Sch I Art 1 *infra*)

Mesne Profits—In a suit for *Washilat* (mesne profits) only the Court Fee payable is to be computed on the amount claimed in the plaint, *Kadir Boksh* v *Wise*, Marsh 165, 1 Hay 370. When a suit for declaration of title and possession with mesne profits is decreed and the amount of mesne profits is directed to be ascertained in execution *held*, on an appeal by the defendant, that the memorandum of appeal should bear Court Fee stamp upon the amount of the mesne profits claimed antecedent to suit The case is governed by Section 7, Sub-section (1) *Bunwari Lal* v. *Daya Sankar*, 13 C W. N. 815 : 1 Ind. Cas. 670.

For other Cases see under Section 11 of the Court Fees Act.

Money.—According to Section 7, Clause (1) of the Court Fees Act, the fees payable in a suit for money must be according to the amount claimed. Where the Plaintiff sued for recovery of Rs. 1,123-4-0 alleged to be due to him, after deducting a sum of Rs 2,500 (said to be due by him to the Defendant on account of the price of certain goods) from Rs 3,623-4-0 which he assessed as the amount of damages suffered by him by reason of the defendant's failure to perform certain contracts entered into between the parties, held that the Court Fees paid *ad valorem* on the amount actually claimed are sufficient, *Qyam-Uddin* v. *Delhi Flour Mills Company*, 47 Ind. Cas. 992: 175 P W. R 1918

But a suit for recovery of purchase price is a suit for specific performance, *Bhasya Karlu* v. *Andalammal*, (1918) M. W. N. 896

Mortgages—In suits for sale the Court Fees payable are to be computed on the principal plus interest up to the date of suit, *Nama Bin* v *Hari Bin*, 7 Bom L R 194. If the suit be against the heir of the mortgagor and also for sale not only of the mortgaged properties but also of other properties of the mortgagor in the names of their heir the suit is for money and should be valued at the entire amount claimed plus interest and Court Fees calculated *ad valorem* are payable, *Kashinath* v. *Ganpatrao*, 18 Bom. 696 When the Plaintiff sued for sale on a mortgage but the trial Court passed a decree not only on the mortgage but also on two other prior mortgages for which relief was not asked for, and no provision made in the decree for the sale of the property to satisfy these debts, if paid, held on appeal, that no Court Fees are payable in respect of the additional relief granted in the decree which the High Court amended and the High Court expressed an opinion that the appellant will be able to obtain a return of the additional Court Fees which they have been required to pay, *Indar Sen* v. *Rikhai Singh*, 30 All. 103 (1908) 28 A. W. N. 31: 5 All L. J. 18

Interest—No additional stamp is required on account of the claim for interest from *institution of suit until payment*. It stands on the same footing as future mesne profits which do not fall under Section 7 of the Court Fees Act, *Vithal Hari* v *Govind Basdeo*, 17 Bom. 41. But Court Fees are to be paid on past interest claimed in suit. See also under *"interest"* under Art. 1 Schedule 1 of the Court Fees Act.

Rent.—Rent is not a sum payable periodically and does not come under paragraph II, *Kali Charan* v. *Maharaja Bahadur Keshav Prosad Singh*, 4 Pat. L. J. 561.

Suit for Declaration of Title and Injunction and Rent.—In *Perumal* v. *Natumal*, 6 S. L. R. 144: 17 Ind. Cas. 44, it was

held that a suit for rent and declaration of title is a suit based on distinct causes of action and so far as the suit relates to rent it is a suit for money and comes under paragraph 1 of Section 7 of the Court Fees Act

Annuity-Arrears.—Where a Plaintiff prays for a declaration of right to receive a periodical payment and also asks for arrears of the sum so payable, Court Fees should be calculated under Section 7 (ii) of the Court Fees Act, on ten times the amount claimed to be payable for one year in respect of the periodical payment plus *ad valorem* Court Fees on the amount claimed as arrears, *Shahzadi Begum* v *Mahbub Ali*, 42 All 353 18 A. L J 328 55 Ind Cas 800

Valuation.—The valuation of a plaint in which money decree is claimed, is based on the actual sum claimed after allowing for deductions, such as sums expressly set off in the plaint, *D. S. Abraham & Co* v *Ebrahim*, 1925 A. I R. 65 (R.).

PARAGRAPH II.

Future Right to an Annuity.—Where the plaintiff sued for arrears of annuity plus future annuity at a certain amount per month, *held* that the Court Fee on arrears was *ad valorem* on the claim, as for the future annuity the Court Fee payable is to be calculated on ten times the amount annually payable, *Garya Bai* v *Har Kuar*, 6 A W N 228 (1886), where it was also held that excess Court Fee paid in the trial Court may be allowed to be credited in favour of the party in Appeal Court, see also *Narsinhacharya* v *Swami Rayacharya*, 8 Bom H. C. A. A 55

Profits of Inam Lands.—The Court Fees on the memorandum of appeal in a suit for a declaration that under an express agreement, the plaintiff is entitled to a share of the net income of certain Inam lands, must be calculated under Section 7, paragraph II, i e , ten times the average annual profits may be taken to be the value of the relief in respect of future mesne profits, *Fakirbhai* v *Sorabji*, P. J 1883 p. 205

Suit to declare that payment of maintenance is wrongful— Where the Plaintiff alleged that the payment of maitenance to defendant No 1 is illegal and wrongful, held, he must also ask for an injunction, and amend his plaint which was allowed *Sordar Singh* v *Ganpat*, 14 Bom. 395

Future emoluments attached to an office.—Where the Plaintiff valued his claim for payment annually of emoluments attached to a certain office at ten times the annual value, the Subordinate Judge held that the valuation cannot be made under this paragraph as the right to the emoluments is ...

on performance of service and is not a sum payable periodically *and returned* the plaint to be presented to proper Court This order was upheld by the High Court, *Krishna* v. *Ravi Varma*, 8 Mad. 384. But see the case of *Garijanund* v. *Sailajanand*, 25 Cal 645 (651), where it was held that an appeal, the subject matter of which was declaration that surplus *charao* (offerings to Baidyanathji) is payable to the Plaintiff by the successor-in-office, was rightly stamped with a Court Fee of rupees ten under clause iii, Act 17, Sch. II of the Court Fees Act The Plaintiff brought a suit for the office of the *sheik* and to certain properties attached thereto and prayed for a declaration that the defendant had no right to' the office and the properties in dispute as well as for an injunction restraining the defendant from interfering with the property or doing anything in any may inconsistent with the right of the plaintiff It appeared that the defendant was in possession of most of the properties The High Court held that the suit is not maintainable without a prayer for possession and the Plaintiff was allowed to pay additional Court Fees and amend the plaint, *Abdul Kadar* v *Mahomed*, 15 Mad 15

Maintenance.—Where the plaintiff brought a suit on the ground that according to the terms of the sale deed executed by her in favour of the defendants, she and her descendants are entitled to a monthly sum of Rs 100 from the defendants and the reliefs prayed for were (a) it may be declared as against the defendants that the plaintiff and her descendants generation *after generation are entitled to receive* from the *defendants* and their representatives maintenance which is to be a charge on the property mentioned in Schedule A ; (b) a decree awarding Rs. 1,800 on account of monthly allowance at the rate of Rs 100 per month for 18 months may be passed, held, that the prayer in respect of (a) being a claim for declaration of right to a sum periodically payable comes under Section 7, clause (ii) of the Court Fees Act, and Court Fee is to be paid on ten times the amount claimed as payable for one year, *Shahzadi Begum* v. *Mahbub Ali*, 42 All 356. 18 A L J 328 55 Ind Cas 809

A suit by the plaintiff—an illiterate woman—that she is entitled to a maintenance of Rs 150 a year and for amending the document purporting to have been executed by her, whereby she is alleged to have relinquished all her interests in the disputed property for Rs. 150 only, is a suit for declaration with a consequential relief under Section 31 of the Specific Relief Act. The valuation is to be made under Section 7, ii although the suit is not under that paragraph, *Musst. Bari Bahu* v. *Kundan Singh*, 71 Ind. Cas. 31 : 1922 A I. R. 264 (Nagpore)

PARAGRAPH III.

A suit for declaration of Plaintiff's right over certain moveable property in the possession of the Plaintiff, but which are attached in execution of a decree and for setting aside an order refusing a claim thereto can be brought on a stamp of Rs 30 and need not be stamped according to value of the property attached, *Gulzari Mal v Jadaun Rai*, 2 All 63

PARAGRAPH IV. (a).

Suit to Recover Bonds—Comes under this clause, *Nero v Ramabai*, 1864 P. J p 145, and should be valued at the amount payable under the bond, *Chet Singh v Mul Singh*, 10 P. R 1871

Suit to Recover Title Deeds—A suit to recover title deeds is not a suit to obtain possession of land or to deal in any way with the land itself within the meaning of Section 12 of the Letters Patent, *Juggernath v Biraj Nath*, 4 Cal 322 3 C L R 375

A suit to have a sale deed executed and completed or for the recovery of the sale deed, is a suit for Specific Performance of a contract, *Faquir Chand v Ram Dutt*, 1924 A I R 439 (L)

PARAGRAPH IV. (b).

Partition—See also under Section 7, iv (c) and Art 17 (6) of Schedule II of the Court Fees Act

Jurisdiction—In a suit for partition, the Court can only deal with so much of the properties in suit as lie within its jurisdiction and not with properties outside British India, *Punchanun Mullick v Shib Chunder*, 14 Cal 835, *Moti Ram v Kanhya Mal*, 77 Ind Cas 780

Allahabad High Court—The valuation is the valuation of the share of the plaintiff and Court Fees are to be paid on that value, *Wajih-Uddin v Wali-Ullah*, 24 All 381 22 All W N 85

Bombay High Court—A suit for partition and separate possession of joint property consisting of land, houses and moveables, does not for the purposes of Court Fee fall under Section 7, Clause iv (b), but falls under Section 7, (v) of the Court Fees Act and therefore Section 8 of the Suits Valuation Act has no application. It is the market value of the lands, houses, etc., that determines the jurisdiction, *Dagdu Sakharam v Totaram*, 33 Bom 658 4 Ind. Cas 242 11 Bom L R. 1074.

The plaint in a suit for partition and possession of plaintiff's share of the joint family property, is to be stamped with Court Fees calculated *ad valorem* on the share claimed by the plaintiff, *Bulwant Ganesh v. Nana Chintamon*, 18 Bom 209.

Calcutta High Court.—According to the Calcutta High Court no case comes under this clause, *Kirtee Chunder* v. *Anath Nath*, 8 Cal. 757 : 11 C L R 95, if the plaintiff is in joint possession of a portion of the property sought to be partitioned then the case comes under Art 17, Cl vi of the second Schedule of the Court Fees Act ; but if he is not in possession or in other words if there is complete ouster then he must sue for recovery of possession and partition and the plaintiff is to pay *ad valorem* Court Fees upon the plaint (or memorandum of appeal) appropriately framed for that purpose, *Bidhata* v *Ram Charitra*, 12 C. W N 37 : 6 C L J 651 See also *Sasi Bhusan* v. *Rai Jatindra Nath*, 15 C. L J. 443 10 Ind Cas 463 ; *Loke Inder Singh* v *Dhakeswar Prosad*, 21 C L J 253, *Beni Madhav* v. *Govinda Chandra*, 22 C W. N 669 46 Ind Cas. 165 ; where it was held that the plaint in a suit for partition of joint family business and of immoveable and moveable properties is to be stamped with a Court Fee of Rs 10.

See also cases under Act 17, VI Sch. II of this Act. "Partition"

Possession by a co-owner is prima facie the possession of the other co-owners and in order to make the possession by one co-owner adverse there must be ouster of the plaintiff A person who sues for possession but is out of possession must ask, first of all, to be restored to possession of his share and pay *ad valorem* Court Fees upon his plaint, whereas in the case where the plaintiff is in possession he simply sues for partition and separation of his share, *Ahamuddin Tamijuddin* v *Amiruddin*, 44 I C. 216 (Cal).

Central Provinces.—Where the Plaintiff in a suit for partition is admittedly in possession and only seeks to change the form of enjoyment, a Court Fee of Rs 10 under Art. 17 (vi), Sch. II of the Court Fees Act is sufficient, but if the suit be for enforcement of a disputed right then *ad valorem* Court Fee is payable on the value of the share, *Sripati* v. *Shridhar*, 15 C. P. L. R 120.

Madras High Court.—In a suit for partition of the joint family property where the plaintiff is in joint possession with other Coparceners, the Court Fee is to be paid under Art. I, Sch. I of the Court Fees Act and not under Art. 17 Cl. VI of Sch II of the Act, *Baganadan Rangiah* v. *Boganadan Subramania*, 21 M. L. J. 21 : 8 Ind. Cas. 512.

And Court Fees are to be paid on this basis even if the

lands be in the possession of tenants, *Reference under Court Fees Act*, Section 4, M. L. J. 110.

The plaintiff in a suit for partition, where part of the property to be partitioned consists of trade assets, is entitled to put an approximate valuation on such assets in accordance with Section 7, iv (f) *of the Court Fees Act Balapattabhi Chett v. Bubbaraja Chetty*, 41 M L J. 433, (1921) M W N 611; 14 L. W. 446, 70 I C 17 but if the property to be partitioned is not family property then Sch II Art 17, vi is applicable, *R. P. Gill v L. Varadaraghavayya and others*, 43 Mad 396

Lahore High Court.—A suit to obtain separate possession of admitted share in the joint family property on the allegation that his right to separate possession was denied falls under S 7, iv, (b) and a Court Fee of Rs 10 is insufficient, *Raghbar v. Salig Ram*, 104 P R 1895 See *contra Fatteh Chand* v. *Bilas Rai*, 61 P L R 1916 96 P W. R 1916 96 P R 1916 34 Ind Cas. 857 Where a suit was for a declaration to the effect that certain arbitration proceedings by which the father of one of the parties attempted to obtain separate possession of the properties inherited by him, are null and void and praying that joint-possession may be given to him and he valued the relief at Rs 2,500, *held* that the suit is one to enforce the right to share in joint family property and the case came under Section 7, iv (b) and the value of the suit is the amount stated in the plaint, *Dwarka v Krishna*, 2 Lahore, 114 61 Ind Cas 628

Objection to separate items.—Where the appellant, in an appeal from the final decree, attached separate items of property allowed or disallowed, *ad valorem* Court Fees should be paid on the amounts entered in the various grounds of appeal, *Md Majid Ullah v. Md Hamid Ullah Khan*, (1924) A I. R 325 (Lah.)

Allahabad High Court.—According to the *Allahabad High Court* the valuation is the value of the share sought to be partitioned and not the entire property, *Wajih-Uddin v Walli-Ullah*, 24 All 381 22 All W. N. 88.

The *Bombay High Court* has taken similar view in *Motibhai v Horidas*, 22 Bom 315

Calcutta High Court.—In a suit for partition the valuation for the purpose of injunction is the value of the entire property sought to be partitioned (*according to the Calcutta High Court*) *Edward Dalgheish v Ramdhari*, 4 C L. J 509 and other cases.

Valuation-Madras High Court.—In a suit for partition of land of which Plaintiff is in joint possession he is entitled to value the suit at his own estimate for purposes of jurisdiction and the Court cannot reject the same even if it be an arbitrary

valuation, *Chelasamy Ramiah* v *Chelasamy Ramasami*, F. B. 13 M. L. T. 128 18 Ind Cas 368: 1913 M. W. N. 105. 24 M. L J. 233

Where there is no ouster by the defendant of the plaintiffs from the joint possession of the joint family property Section 7 (4) (b) applies to the case The proper *test* to see whether Section 7, 4 (b) applies will be if the present state of affairs continued for 12 years The plaintiff would be barred from suing, where the plaint is on the footing that the right to a share exists admittedly and has never been challenged, and another plaintiff is merely suing to enforce that right to share A mere statement by the plaintiff in an affidavit filed more than a year after the institution of the suit that he is out of enjoyment of the profits does not affect the question—*P M Ramakrishna Iyer* v. *Muthuswamy Iyer*, 1925 A I R 468 (Mad)

Patna High Court.—The value for the purpose of jurisdiction of a suit for partition pure and simple, where the plaintiff is in joint possession of his share and there is no dispute as to title or share, is the value of the whole of the property sought to be partitioned, (*Dukhi Singh* v *Harihar Sah*, 5 P. L. J. 546: 1921 Pat 89 58 Ind Cas 226 dist on the ground that that was a suit for declaration of title with a consequential relief), *Ranjit Sahi* v *Maulavi Quasim and others*, 72 Ind Cas 916; 1923 All I R 342 (Patna)

The Nagpore Court has followed the Calcutta Court See also *Munaji* v *Sitaram*, (1924) A I R 105 (Nagpore).

The *Punjab Court* has taken the view of the Bombay Court in *Bhagat Ram* v *Gokul Chand*, 150 P R 1908

In *Sindh* the value of the share claimed, *Wadhumal* v. *Chellumal*, 6 S L R 250 · 19 Ind Cas 870

PARAGRAPH IV. (c).

The proviso to Section 42 of the Specific Relief Act (Act I of 1877) is as follows—"Provided no Court shall make any such declaration where the Plaintiff being able to seek further relief than a mere declaration omits to do so."

Determination of question. "For the right determination of the question at issue it is necessary to ascertain what are the object and nature of the suit." *Bibi Phulkumari* v *Ghanshyam*, 35 Cal. 202 · 35 I. A. 22: 12 C. W. N. 169. 7 C. L J 36. 10 Bom. L R. 1 · 17 M. L. J 618: 5 A. L J 10 2 M. L. T. 506. The question whether Section 7 paragraph iv (c) of the Court Fees Act applies or not must depend on the substance of the claim and not the mere words which the plaintiff may choose to introduce into his plaint, *Malikka Meladathil Kelutchammal*

v. *Mallika Meladhathil Karnavan Kunji*, M. L. T. 177 5 Ind Cas. 027 20 M L J 701 See also *Chingacham Vitil Sankaran v Chingachan Vitil Gopala*, 30 Mad. 18, *Venkata Ramani v. Narayansami*, 1025 M W N 276

"For the purposes of stamp the cause of action which is stated in the plaint, and that only, must be looked at" *Mohendra Chandra Ganguly v Ashutosh Ganguli*, 20 Cal 762; *Rajabala v Radhika*, 40 C L J 150 1924 A I R 069 (C) · 29 C W N 76; *Banku v Chatui*, 1024 A I R. 640 (P): *Zinnatunnessa v Girindra*, 30 Cal 788, *Musst Bakutunnissa v Musst Feanz Fatima*, I L R 5 Patna 631

The Court is to look at the nature of the relief claimed and for that purpose the allegations in the plaint only are to be considered, *Bagala Sundari v Prasanna*, 21 C W N 375, 35 Ind Cas 707, *Manghammal v Totaram*, 6 S L R 72, 16 Ind. Cas 77?

Evasion of Stamp Law.

In the following cases High Courts remarked upon the attempt to evade stamp laws, *Chokalinga v Achiyar*, 1 Mad 40, *Ganpat Gir, Bholagir v Ganpatgir*, 3 Bom 230, *Bama Sundari v Achiyar*, 22 W R 338, and the parties in these cases were compelled to pay deficit Court Fees

But in *Deokali Koer v Keder Nath*, 39 Cal 704 (707), 16 C W N 838, 15 Ind Cas 427 Jenkins, C J, observed "It is a common fashion to attempt an evasion of Court Fees Act by casting the prayers in the plaint into a declaratory shape Where the evasion is successful, it cannot be touched, but the device does not merit encouragement or favour" See also *Idol Sri Sri Gokul Nath Jiu v The New Birbhoom Coal Co, Ld*, 27 C. W N. 927, 80 I C 589 where are attempt to evade was found

Contra.—"Provisions in fiscal statutes are not to be so construed as to furnish a chance of escape and a means of evasion" *Nanhi Lal v Jogendra Chandra*, 28 C W N. 403; 39 C L J 222 (228), 82 I C 297, 1924 A I R 881 (Cal).

Nature and History of Declaratory Suits discussed in *Deokali Koer v Kedar Nath*, 39 Cal 704 16 C W N 838 15 Ind Cas 427 But Section 42 of the Specific Relief Act is not exhaustive, *Robert Fischer v Secretary of State for India in Council*, 22 Mad 270 P C, *Veerama Chanenn v Soma Pitchayya*, 43 Mad 410, (1920) M W N 393, 58 I C 585

Scope.—The scope of this section is discussed in *Raja Gopala v. Vijoy Raghava*, 38 Mad 922

Consequential Relief.—Means a substantial and immediate remedy in accordance with the title which the Court has

been asked to declare, *Meerza Hyder* v. *Hussain Reza*, 24 Ind. Cas. 316

Whether the plaintiff must ask for a consequential relief in a suit for declaration, depends upon the circumstances of each case, *Umarrannessa Bibi* v. *Janurannessa Bibi and others*, 37 C. L. J. 499

Where the plaintiff frames his suit as one for declaration only when he should have asked for a consequential relief, the Court cannot insist on his adding a prayer for consequential relief and on his paying Court Fees on that basis, *Tekait Thakur Narayan Singh* v. *Nawab Saiyid Dildar Ali*, 2 Pat 915 ; 1925 A. I. R. 210 (P.)

The Principle of Assessment.—The principle of assessment of Court Fee is that where a Plaintiff asks for a declaration with a consequential relief, he is bound to pay an *ad valorem* fee proportional to the loss from which he seeks to be relieved, *Pandit Brij Krishna* v. *Chowdhury Murli Rai*, 4 Pat. L. J. 703. See also *Ram Sekhar Prosad Singh* v. *Sheonandan Dobey*, I. R. R. 2 Pat 198 , 73 Ind. Cas. 43.

A vague and indefinite prayer for any other relief to which the plaintiff may be found entitled to, does not convert a suit for a mere declaration into one for a declaration with a consequential relief, *Gangadhar Misra* v. *Rani Debendrabala*, I. L. R. 5 Pat 211 ; 94 I. C. 22 ; 1926 A. I. R. 249 (P.).

Account and Inspection of Books.—A suit merely praying for a declaration that the plaintiff is entitled to require the defendent to account to him and to permit him to inspect the books, is simply a suit for a declaratory decree without consequential relief and therefore comes within Art. 17 Clause (iii) of Sch. II of the Court Fees Act ; but if he, in addition, prays not only for such a declaration but also for an injunction for the production of books and property in their hands and for a positive decree for an account to be taken by Court, such a suit is "to obtain a declaratory decree where consequential relief is sought for," *Manohar Ganesh* v. *Bawa Ram Chandra*, 2 Bom. 219 ; *Raghunath* v. *Gangadhar*, 10 Bom. 60

A suit for a declaration of plaintiff's right to attach a sum of money in the hands of a third person in execution of his decree against A and also for a decree for such sum against the defendant in the event of his obtaining such money before decision of suit when in fact the defendant did obtain such money, *held* that *ad valorem* Court Fee is payable, *Durgaram* v. *Wakdu*, 1881 P. J. 98.

To exonerate properties from sale.—Suits to exonerate properties from sale under a mortgage decree is a suit for a

declaration with a consequential relief and therefore the plaint is to be stamped with *ad valorem* Court Fees not exceeding the value of the property, *Venkappa* v. *Narasimna*, 10 Mad 187.

Protection from Sale.—In a suit where the plaintiff prayed that her right be established in respect of a third share of the house by virtue of a deed of gift and for her possession and enjoyment thereof being protected from sale be established, held, that a consequential relief has been asked for and *ad valorem* Court Fees must be paid, *Ram Prasad* v *Sukh Dai*, 2 All 720 F. B.; *Lachmi Narayan* v *Gouri*, 6 W N 154, *Makhan* v. *Surja*, 5 All. W. N 48.

Removal of attachment—In a suit for removal of attachment it was held that *ad valorem* Court Fee is payable as the prayer for removal of attachment is a consequential relief, *Ostoche* v. *Hari Das*, 2 All 869

Removal of attachment and possession of a house—Held that *ad valorem* Court Fee is payable as consequential relief is asked for, *Mati Chand* v *Dadabhai*, 11 Bom. H C A C 186

Restoration of attachment—A prayer for restoration of attachment is really a prayer to set aside a summary order as such suits arise after an objection is allowed, hence a Court Fee of Rs 10 is payable under Clause 1, Art 17 of the second schedule of the Court Fees Act, *Dayachand* v *Hemchand*, 4 Bom 515; *Dildar* v. *Narain*, 11 All 365; *Govinda* v. *Gajraj* 13 All 389; *Vithal Krishna* v. *Balkrishna*, 10 Bom. 610 But see *contra*, *R M L M. Subramanian Chetty* v *Maung Maung Pe*, U B. R. 1897—1901 Vol II, 353

Suit to set aside an order disallowing a claim to attached property.—Where a claim was preferred by the plaintiff to the attached property and the claim was lost and the plaintiff then brought a suit to establish his right to the property (although other reliefs were claimed—these were held to be redundant prayers) it was held that the case came under Clause 1, Art 17 of Sch. II of the Court Fees Act 1870; *Bibi Phulkumari* v. *Ghanshyam*, P. C. 35 Cal. 202; 35 I. A 22 12 C W N. 169: 7 C. L. J. 36 This over-rules the older decisions viz, *Muftee Jelalooddeen* v *Shoharoollah*, 22 W R 422 15 B L R Ap. 1; *Ahmed Mirza* v. *A. Thomas*, 13 Cal. 162 Where the plaintiff's property is attached at the instance of a creditor of its ostensible owner and the plaintiff after rejection of his claim to the property brings a suit and asks only for release of his property from attachment, the Court Fee payable is rupees ten under Clause 1, Art 17 of the second schedule of the Court Fees Act If the ostensible owner is also joined as a party to the suit and a prayer is made against him for recovery of possession, the Court Fee payable would be calculated upon the value of the property

in accordance with Section 7, (iv), (c) of the Court Fees Act, *Chandradhari Singh* v *Tipon Prosad*, 43 Ind. Cas. 971 : 3 Pat L. J 482

Valuation.—In *Modhusudan* v *Rakhal Chandra*, 15 Cal. 104, it was held that the amount which is in dispute settles the jurisdiction *i e*, the amount which the execution creditor would recover, if successful, and, not the value of the property in dispute.

Confirmation of Possession.—The plaintiff claiming under a Will applied for a certificate under Act XXVII of 1860, but the High Court refused such a certificate. He brought a suit to confirm his possession by enforcing the will by setting aside the summary order Held that a consequential relief was prayed for, *Dinabandhu* v *Rajmohini*, 16 W. R 213 : 8 B L. R. Ap 32 ; *Jhumak Kampti* v *Debu Lal Singh*, 22 C. L. J. 415 ; *Dinanath Das* v. *Ramanath Das*, 23 C L. J 561 ; *Rajabala* v. *Radhika*, 40 C L J. 150 1924 A I R. 969 (C) ; *Joynarayan* v *Grish Chandra*, 22 W R. 438 15 B L. R 172 ; *Bohuroonissa* v *Kurreemoonnesa*, 19 W. R. 17 , *Tacoordeen Tewary* v. *Nawab Syed Ali*, P C. 1, I A 192 : 21 W R 340 : 13 B. L. R. 427.

A prayer for confirmation of possession includes a prayer for recovery of possession if the court thinks that the plaintiff is out of possession and is a consequential relief within the meaning of Section 7 (iv), (c) of the Court Fees Act.

Valuation.—It is not open to the plaintiff to put an arbitrary and incorrect valuation on the relief sought The valuation is to be fixed with reference to the value of the subject matter of the relief, *Ram Sekhar Prasad Singh and others* v *Sheonandan Dubey*, I L R 2 Pat 193 1922 Pat C W. N 337 ; 68 Ind. Cas 316

Documents.—*Suits to avoid or set aside deeds by Purdanashin Lady*.—Where a purdanashin lady (the plaintiff in the case) asked that the deed alleged to be executed by her but not in fact executed by her, be set aside as not genuine and also for confirmation of possession ; Held that the prayer for setting aside the deed is a prayer for substantial relief and courts of justice are not justified in substituting therefor a mere declaration of the plaintiff's title *Tacoordeen* v. *Nawab Syed Ali*, L. R. 1 I. A. 192 : 21 W R. 340 : 13 B. L. R. 427.

When a person is induced to execute a deed other than what she intended to execute, the document is void and need not be set aside ; therefore, in a suit to set aside such a document if the plaintiff—in this case a purdanashin lady—alleges that she is still is possession of the disputed property, all she is required to ask at the time of suit, is a declaration that the deed in favour of the defendant is not her deed. The Court Fee payable is

Rs. 10, *Umarannessa Bibi* v. *Janurannessa Bibi and others*, 37 C. L. J 499.

Deed of gift.—A suit for avoiding a registered deed of gift comes under this clause as the court is to send a copy of the decree, in case the plaintiff succeeds, to the officer in whose office the instrument had been registered under Section 39 of the Specific Relief Act and therefore a consequential relief was asked for and the plaint must be stamped with a Court Fee *ad valorem* on the valuation *Musst Noowooager* v *Shridhar*, 3 Pat L J 194 45 Ind Cas 238, *Parvati Bai* v. *Visvanath*, 27 Bom. 207 6 Bom L R 1125 followed

A suit for declaration that a deed of gift is invalid and for possession of the properties conveyed by it, is a suit for declaration with a consequential relief, *Musst Ganga Dei* v *Sukhdeo Prasad*, 47 All. 78 22 A L J 945 84 I. C 624 1924 A. I. R 612 (All)

Trust Deeds—The plaintiff brought a suit against the Defendant to set aside the deed of endowment executed by her and to recover Rupees 2,50,000 handed over by her to Defendant No 1 She valued the suit at Rs 2,50,000 and paid court-fees *ad valorem* on that The suit was decreed and the Defendant appealed but stamped their memorandum of appeal with a court-fee of Rs 10 only The High Court held "that the defendant may not have any personal interest at all and yet the subject-matter of the appeal may be as valuable as the subject-matter of the suit" and ordered that the memorandum of appeal should be stamped with a court-fee *ad valorem* on Rs 2,50,000, *Mahomed Masik* v *Malka' M U'gwa*, 10 Cal 380

A suit for cancellation of a Samudayam deed to which the plaintiff was not a party, is a suit for a declaration, but if injunction and accounts are asked for then the suit comes under Section 7 Cl iv (c) of the Court Fees Act and *ad valorem* court fees are payable The recently added provision by the amendment act in the Madras Council does not affect the question.

A suit for removal of trustees on account of their having executed an illegal deed on behalf of the devaswom comes under Art. 17 B Sch II of the Court Fees Act, *Vellora Karuppan Vithil* v *Kallur Vengayil Chathukutti*, 78 I C 118 1924 A. I. R 611 (Mad)

Suits for Cancellation of Deeds—See Sec 39 of the Specific Relief Act, 1877, Chap V The prayer that the deed may be set aside is a prayer for a substantial relief, *Tacoordeen* v *Nawab Syed Ali*, I A 192 13 B L. R 427 23 W. R 340 In a suit to declare that a sale deed is fraudulent, for an order to have it cancelled and a copy of the order be sent to the Sub-registrar is a prayer for a consequential relief and the suit falls

under Sec 7, iv (c) of the Court-Fees Act, *Parvati Bai* v. *Visvanath*, 29 Bom 207: 6 Bom. L R. 1125; *Nga Chit Wet* v. *Kwanan*, U B R 1915 4th quarter p. 102 36 Ind. Cas. 624; *Moung Kying* v. *Po Thin*, 2 L B R 266.

Cancellation on the Ground of Fraud—A suit for cancellation on the ground of fraud, coercion and undue influence falls within this clause and the court-fees are to be calculated *ad valorem* on the valuation by the plaintiff. *Samiya* v. *Minammal*, 23 Mad 490; 10 M. L J 240, *Malikka* v *Kunji*, 20 M. L. J. 791 · 7 M. L T 177 5 Ind Cas. 927 See also *Wallace* v. *Lakshmi Ammal*, 49 M L J 608, 1925 M W. N. 826; 1925 A I. R 96 (F.)

The plaint, in a suit for cancellation of deed of release (*faraghkhati*) and for any other consequential relief to which the plaintiff may be found to be entitled to, is to be stamped with a court-fee calculated *ad valorem* on the valuation, *Nanak Chand* v. *Jiwan Mal*, 35 P R 1914 237 P L. R. 1914: 25 I. C. 435. See also *Narain* v. *Aya Putter*, 7 M H. C. R. 372, in which it was held that *ad valorem* court-fee was necessary.

A suit for declaration by a member of a joint family governed by Mitakshara Law that the mortgage executed by another coparcener of the joint family property does not bind the property mortgaged, is not necessarily a suit for cancellation but is a suit falling under Art 17 (iii) of the 2nd Schedule of the Court Fees Act, *Sham Das* v. *Chuin Das*, 1925 A I. R 90 (L.): 78 I. C 788

Suit for Cancellation of a Deed of Mortgage—Where one of the defendants executed in favour of another a mortgage in contravention of a stipulation in favour of the Plaintiff not to alienate the property in any way without paying off the mortgage money, and the plaintiff sued for cancellation of that mortgage making both of them parties to the suit; Held that the case fell under S 7 iv (c) of the Court Fees as a consequential relief has been claimed, *Chuni Lal* v *Bodar Mal*, 2 P R 1886. See also *Karaman Singh* v. *Norman Cockell*, 1 C. W N. 670; *Devidas* v. *Ramlal*, 7 N. L R. 190: 13 I C. 864

Cancellation of Instrument affecting Land.—In *Konaram* v. *Komappan*, 14 Mad. 169, it was held that the plaint is to be stamped with Court-Fees calculated *ad valorem* on the value of the document as the plaintiffs would be gainers to that extent if they obtained a decree.

Instrument affecting Title.—Where the reliefs prayed were: (1) It may be held by the Court that the disputed properties form portion of the properties left by the husband of the plaintiff and that the defendant No. 1 had no title thereto and that she had no right to transfer the same; (2) on determination of relief

No 1, it may be held that the defendant No. 1 had no right to execute the sale deed, dated the 3rd August, 1920 and that neither it has affected the title of the plaintiff nor has defendant No 2 acquired any right thereby, *held* that the suit is one for declaration with a consequential relief as the prayers are not co-extensive but are necessary and separate, unless the plaintiff elects to delete one of them. *Khinchand Mahton* v *Musst. Meghni*, I. L R 5 Patna 493, 1926 A. J. R 453 (Patna).

Cancellation of a Deed of Partition.—Where the plaintiff amongst other prayers claimed that a previous deed of partition be cancelled, then *ad valorem* court fee was leviable on the plaint and the memorandum of appeal, *Satish Chandra* v *Kali Dasi*, 26 C W. N 177, 34 C L. J 529.

Invalidity of a Bond —Cancellation, see *Karam Khan* v *Daryai Khan*, 5 All 331 and other cases under Art. 17, clauses 3 and 6 of the second Schedule of this Act. Where the suit is one for declaration that the sale deed was invalid and might be cancelled, the court fee payable is *ad valorem* on the value of the relief claimed *Sit Soe and others* v *Ma Thin*, 1924 A I R 378 (R) 84 I. C. 201

Cancellation of a Bond Executed by 3rd Party.—A suit to cancel a mortgage bond executed by a third party in respect of the property to which the plaintiff in possession is entitled, is a suit for a simple declaration without consequential relief and a court fee of Rs. 10 is sufficient, *Karam Khan* v *Daryai*, 5 All 331 3 All W N. 51 F. B This case was dissented from in *Parvati Bai* v *Visvanath*, 29 Bom. 207, but it appears that in that case the contest was between the parties to the instrument, see also *Arunachellam* v. *Rangasami*, 38 Mad 922 (924) 28 M L. J. 118; *Sham Das* v. *Mohant Charan Das*, 78 I C 782 · 1925 A I R. 90 (L.); *Venkata Ramani* v *Narayansami*, 1925 M W. N. 276.

Valuation—Where a suit to cancel a mortgage-bond for Rs 4,000 was valued at Rs 50 the Madras High Court on appeal said that the trial court cannot refuse to accept the valuation made by the plaintiff "under the sanction of verification of the amount at which he values the relief sought" nor can it revise it—a power which is limited to cases provided for by Section 9, which relates to an estimate given by the plaintiff of the amount of nett profits of the land or the market value of the land, house or garden as mentioned in Section 7 paragraph v and vi" . ..... Until such a rule is framed the valuation given by the plaintiff cannot be ... *Chinnamal* v. *Madarsa Rowther*, 27 Mad. 480: 14 M. L. J. ...

In a suit for cancellation of a document securing ...

having a money value, the amount or value of the property for which the document was executed is the amount on which the *ad valorem* court-fee is to be paid *V. N. Magar Aiyangar v Srinivasa Aiyanagar and another*, 1925 A. I. R. 1248 (Mad.).

Suits to Declare Agreement Not Binding.—The plaint in a suit for a declaration that an agreement is not binding upon the plaintiffs and for any other relief which the court considers proper, is to be stamped *ad valorem* on the value of the interest of the plaintiff as the declaration of the invalidity of the agreement would afford the plaintiff relief of a very substantial character, *Parathayi v Sankumani*, 15 Mad. 294.

Suits to Declare Documents Not Binding.—A suit for a declaration that an instrument of mortgage executed by the plaintiff is not binding, is a suit for a declaration with a consequential relief within section 7, para iv clause (c) of the Court Fees Act The plaintiff is at liberty to put his own valuation, but the case might be different when the relief sought is by a person who is not a party to the bond or decree. In a case like this the suit may be properly regarded as one for declaration only, *Arunachellam v. Rangasami*, 38 Mad. 922 F. B.: 1915 M W N 118 28 M L J 118. 17 M. L. T. 154: 28 Ind Cas 79

* *Suits for Ordering Demolition of Building*.—The suit setting aside a lease and to have buildings thereon demolished is a suit for a declaration with a consequential relief and comes under Section 7 iv. (c) of the Court Fees Act, *Jogal Kisore v. Tale Singh*, 4 All. 320 2 A. W N. 44

Suit for Damages and Injunction for Interference with Proprietory Rights.—The plaintiff brought a suit against defendants on the allegation that the defendant had cut away certain trees from a jungle belonging to him and damages for the same and injunction to restrain him from cutting any more trees, *held* that the case falls within the provisions of paragraph IV, clause (c) and (d) of Section 7 of the Court Fees Act, *Hari Sankar v. Kali Kumar*, 32 Cal. 734: 9 C. W N 690

Suit for Declaration and Injunction.—When a suit is for a declaration and an injunction, it is not merely a suit for a consequential relief, *Bibi Phulkumari v. Ghanshyam*, P.C. 35 Cal 202: 12 C. W. N. 169: 7 C. L. J., 36 A prayer for a permanent injunction is a prayer for a consequential relief, *Deokali v. Kedar Nath*, 39 Cal. 704 (710): 16 C. W. N. 838: 15 Ind. Cas. 427. See also *UmatAul v. Nauji*, 11 C. W. N. 705 (707): 6 C. L. J. 427; *Hari Sankar v. Kali Kumar*, 32 Cal. 734: 9 C. W. N. 690: *Rai Charan v. Kunj Behari*, 46 Ind. Cas. 884; *Saidunnessa v. Tejendra Chandra*, 44 Ind. Cas.

398; *Rajabala* v *Radhika*, 40 C. L. J 150: 1924 A. I. R. 969 (C); *Vachhani Keshabai* v. *Vachhani Naubha*, 33 Bom. 307: 11 Bom L R. 90. 1 Ind Cas. 108; *Rahimbai Jamalbhoy* v. *Mariam*, 34 Bom 207; 12 Bom L. R. 149; *Pherozshah* v. *Waghji*, 13 Bom L R. 158, *Barru* v. *Lachman*, F. B. 228 P W R. 1913. 111 P. R 1913: 23 P L R 1914: 22 Ind. Cas 503 *Ambalam* v *P K Ramchandra*, 1925 A I. R 1143 (Mad.).

Valuation —In a suit for a declaration of tittle and injunction in respect of a portion of land covered by *Miras Patta*, the valuation for the purpose of jurisdiction should be the market value of the land actually in suit and not market-value of the land comprised in the *Miras Patta*, though the effect of the decision is to set aside the *Miras Patta* as a whole, *Sarat Chandra* v *Srimati Swornamayee*, 36 Ind. Cas. 615 The plaintiff can put his own valuation, *Hari Sankar* v *Kali Kumar*, 32 C L. J. 144 62 I C 685 1922 A I R 242 (Cal); *Balkrishna Narayan* v *Jankibai*, 44 Bom 331 22 Bom. L R. 289 51 Ind Cas 340, *Musst Mulkunnessa* v *Municipal Committee, Delhi*, 118 P L R 1904, *Chinnamal* v. *Madarsa Rowther*, 27 Mad 480 14 M L J 343 See also cases cited *supra* page

Separate Valuation —Where the plaintiff valued the declaration and consequential relief of injunction separately and gave the sum of the two values as the value for the purposes of jurisdiction and court fees, the proper course is to return the plaint to the plaintiff for amendment in order to give the value of the consequential relief of injunction under the last sentence of Sec 7, paragraph iv and to mention that value in the plaint as the value for the purposes of jurisdiction and court fees If along with the injunction relief, additional consequential relief or reliefs are prayed for, they should of course be also valued according to law, *M. Ayimuddin* v *S E S Kadira Rowther*, 1918 M W N 40. 43 Ind Cas 995, *Krishna* v *Secretary of State*, 1914 M. W N 757: 16 M L T. 516 25 Ind. Cas. 375, *Chelasami Ramiah* v *Chelasami Ramsami*, 1913 M W. N 105 24 M L J 233 13 M L T 128 18 Ind Cas 363

Suit for declaration of Title and injunction and Rent — Where A brought a suit against B for rent on the basis of a lease and also asked for declaration of title and injunction against C as he is alleged to have prevented B from paying rent to A, *held* that the suit embraced two distinct causes of action and falls within paras i and iv (d) of Section 7 of the Court Fees Act, *Perumal* v *Motumal*, 6 S L. R. 144: 17 Ind. Cas. 44.

Property in the Possession of Collector and Injunction.—

"Property having been in the possession of the Collector, it was not necessary for and allowable to the plaintiff to ask for an injunction. He was entitled to ask only for a declaration of title," *Shidappa Venkatrao* v. *Rachappa Subrao*, 36 Bom. 628 (630) 14 Bom. L. R. 757: 16 Ind. Cas. 1005, affirmed on appeal to the Privy Council where their Lordships said that no consequential relief could have been asked for, *Rachappa Subrao* v *Shidappa Subrao*, 43 Bom. 507 (516) P. C.: 24 C. W. N. 33: 29 C L. J. 452.

Landlord and Tenant.

Assessment of Rent.—Where the landlord sued his tenant for assessment of rent and for recovery of specific sums of money as damages for use and occupation of land and the court of first instance decreed the suit at Rs 10-2 per bigha including cesses, *held* that Sec 7, iv (c) applied, *i e*, the suits are suits to obtain declaratory decrees or orders where consequential reliefs are prayed, *Kali Charan* v *Maharaja Bahadur Keso Prosad Singh*, 4 Pat. L. J. 561.

Suits for Recovery of Possession by Landlord.—Where a suit for possession is brought by the landlord against several persons, one being an admitted tenant and as between the others and the landlord, the relationship of landlord and tenant did not exist, the suit against the latter cannot be proceeded with without a declaration of title; the Court Fee in the claim against the admitted tenant is *ad valorem* on one year's rent; *Pramatha Nath* v. *Amiraddin*, 24 C. W. N 151: 55 Ind. Cas. 178.

Suits for Recovery of Possession by Tenant.—Where the tenant plaintiff sues for recovery of possession of land, and makes the admitted landlord as well as other persons who claim to be tenants under him parties to the suit, the court fee is to be paid under Sec. iv (c) on the valuation of the relief sought. The valuation must not be an arbitrary valuation, *Ram Ekbal Singh* v. *Baldeo Singh and others*, 19 C L. J. 418: 25 Ind. Cas. 507 See also *Furzand Ali* v. *Mohanth Lal*, 32 Cal. 268; *Ram Raj* v *Girnandan*, 15 All. 63. Where a suit for possession is brought by the tenant on declaration of his rights as an occupancy raiyat in a garden, the valuation is the value of the interest claimed by the plaintiff and not the entire interest, *i.e.*, the interest of the tenant plus the interest of the landlord, *Upendra* v. *Satcowrie*, 23 Ind. Cas. 964.

Valuation.—Suit by occupancy raiyat against proprietors for declaration of certain rights in land and for an injunction restraining the defendant from interfering with the plaintiff's use of those rights *viz.*, to cut grass, was valued at Rs. 130 for the purposes of Court Fees Act and at Rs. 1,000 for the

purpose of jurisdiction. *Held* that it was competent to the plaintiff to value the relief sought by him for the purpose of Court Fees at Rs. 130, *Barru* v. *Lachman*, 228 P. W. R. 1913: 111 P R. 1913: 23 P. L. R 1914 · 22 Ind. Cas 503.

BENGAL TENANCY ACT.

Sec. 105.—Where a number of tenants were joined as defendants in a proceeding for settlement of rent under Sec. 104 (2) (now Sec 105) of the Bengal Tenancy Act and an appeal by the landlord was preferred under Sec 108 of the same Act from the decision of the Revenue Officer making all or nearly all the tenants as respondents and the appeal was dismissed by the Special Judge, on the ground that as many court fees of rupees ten each, as there are tenants defendants, has not been paid The High Court, on a petition by the landlord *held*, "The proceedings are, under Sec 104 (2) (now 105) and the government rules, initiated, not by a plaint, but by an application, and this application is not subject to an *ad valorem* Court fee duty, as suits for money are subject under the provisions of Sec 7 (1) of the Court Fees Act, but, according to a notification of the Government of India No 5086 S R published at page 157, Part I/A of the *Calcutta Gazette* of the 17th October 1894, to a Court Fee of 8 annas If then the case is not a suit at its initiation, and need not be commenced by a plaint, why should
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proceeding under Chapter X shall be a decree, but that it shall have the "force of a decree," which it may have without the proceeding necessarily becoming a suit *None of the rules framed by Government under the Tenancy Act lays down that such a proceeding shall be a suit* Rule 30 (b) merely prescribes that the proceedings shall be dealt with as a suit, that is to say, in respect of its procedure which is all that the provisions of Sec 189, Clause (1), allow Government to regulate by means of a rule Rule 30 (b) cannot therefore have been intended to lay down that a proceeding under Chapter X of the Bengal Tenancy Act, shall be dealt with as a suit in respect of the court fees payable on it If it did, this would be regulating more than the mere procedure to be followed by Revenue Officers in the discharge of a duty imposed upon them by the Act, and would be *ultra vires*," *Upadhya Thakur* v *Persidh Singh*, 23 Cal 723 F B. (1896); *Petu Gharai* v *Ram Khelawan*, 18 Cal 667 overruled. After this case Sec 105 was amended in 1898 by B C. Act III of 1898 and Sec. (3) was inserted which is as follows.—Every application under Sub-Sec. (1) or Sub-Sec (2) shall notwith-

standing anything contained in the Court Fees Act, 1879, bear such stamp as the Government of India may, from time to time, prescribe by notification in the Gazette of India." The Government of India issued Notifications 321 S R and 322 S R. dated 19th January, 1899, which say that such applications shall bear stamp of eight annas for each tenant

Sec. 105A.—Afterwards another Notification was issued, i.e. Notification No. 2254F published in the *Gazette of India*, dated, the 10th August, 1918, Part I, page 1253 and *Calcutta Gazette*, 1922 Part I page 1451 which provides as follows:—

(a) A stamp of 12 annas for each tenant making or joining or joined in the application and

(b) If, at any time during the hearing of the application an issue is raised by the applicant under Sec. 105A of the said Act, in addition, a stamp to the amount of an *ad valorem* fee chargeable under Art. 1, Sch. I of the Court Fees Act, 1870, as amended by the Bengal Court Fees (Amendment) Act, 1922, (Act iv of 1922) subject to a maximum of twenty rupees

The word "*tenant*" in the above notification has been considered to mean a tenancy. Therefore, a stamp of eight annas is to be levied in respect of each tenancy and not in respect of each tenant, who may be a group of tenants holding a particular tenancy" *Reference under Court Fees Act Sachidananda Thakur* v. *Mahes Chandra Das*, 50 Cal 903 28 C. W. N. 116. See also Notification No 1386 R dated 16th April, 1920 of the Government of Assam

Sec. 106.—A suit under Sec 106 of the Bengal Tenancy Act is a suit for a declaratory decree within the meaning of Art 17, Clause iii, of Sch. II of the Court Fees Act, *Satis Chandra* v *Gopal Chandra*, 12 C L J 638: 15 C. W. N. 110: 7 Ind Cas 627. In a suit under Sec. 106 of the Bengal Tenancy Act, the Court Fee to be paid is Rs 10, as in a suit for declaration, *Chandi Charan* v. *Monoranjan*, 17 C. L. J. 417: 18 Ind. Cas 275 See also *Sailaja Nath* v. *Chandi Charan*, 48 Ind. Cas. 552, where it was held that such suits are declaratory suits without consequential relief under Art. 17, Clause iii., Sch. II, of the Court Fees Act, even if the suits are transferred to Civil Courts for trial. In a suit under Sec. 106 of the Bengal Tenancy Act *ad valorem* Court Fee is payable on the valuation in the plaint, but the maximum is not to exceed rupees ten. See Notification No 1897F dated 28th March, 1911, published at page 222 Part I of the *Gazette of India* for Bengal, and Notification No. 311F for East Bengal in the *India Gazette* Part I, page 366; but these notifications were altered by Notification

No. 3789 L. R dated 3rd April, 1922 Calcutta Gazette 5th April, 1922, Part I. page 689 which fixed Rs 20 as the maximum fee in such cases

But in *Chandi Charan* v *Monoranjan*, 17 C. L J. 417, 18 Ind Cas 275, it was held that the above remissions of court-fees are *ultra vires*

Chapter VI (j) Rule 85 of the rules framed by the Government of Bengal provides that with the consent of the Revenue Officer any number of tenants, whose interest is recorded in the same *khewat* entry, may make joint applications or may be joined as defendants in the application, and Rule 88 provides that proceedings under Sec 105A and 106 of the Bengal Tenancy Act, 1885, as amended by B C Act I of 1907, shall be dealt with in all respects as suits between the parties One suit under Sec 106 B. T Act against all tenants of a village in a body upon one plaint with one Court Fee of rupees ten is not maintainable; one suit might be instituted against all such tenants as belong to the same caste or follow the same occupation and separate suits ought to have been instituted with respect to each class of tenants and separate court fees of rupees ten should have been paid for each such suit, *Dhakeswar* v *Harihar*, 22 C. L J. 57 Where the zamindar brought suits against all the tenants of a village claiming that the tenants held at *Nagdi* rent and obtained decree and further obtained an appraisement decree against them and in subsequent settlement proceedings the settlement officer recorded the tenants as holding at *Nagdi* rent in the Record of Rights and the zamindar further obtained 59 decrees against the tenants by virtue of these Record of Rights, and the tenants, then, combined and brought one suit praying that it may be declared that the lands in the *mouzas* have been held at uniform rent without alteration or change from time immemorial, that the *jama* recorded in the survey and settlement *Khatian* was the result of illegal proceedings, that the enhancement is bad in law and that the orders under Sec 109 is void and that the decrees obtained in the Munsiff's Court are contrary to law and not fit to be executed, and the tenant plaintiffs valued this suit as Rs 50,000, and stamped the plaint with a Court Fee of Rs 20 only, the Patna High Court held, that there are 78 sets of tenants for 78 holdings and there are 59 decrees and that the Court Fee of Rs 10 is to be paid by *each* tenant as well as for *each* decree. i.e, the plaint must be stamped with a Court Fee of Rs 1,370 and the memorandum of appeal must be similarly stamped, *Chethru Mahato* v *Khaja Muhammad*, 4 Pat. L J 207 50 Ind Cas 328 Where the landlord brings one suit against 25 sets of tenants on the ground that they are held under *Botai* system and that they are wrongly recorded in the Record of Rights as paying cash rent, held,

that a Court Fee of Rs. 10 should be paid in respect of *each* of the 25 sets of tenants, *Lachhman* v *Sheik Abdul*, 4 Pat. L. J. 299 · 51 Ind Cas 767.

Record of Rights.—The proviso to Sec 111A of the Bengal Tenancy Act is as follows ·—"Provided that any person who is dissatisfied with any entry in or omission from the Record of Rights framed in pursuance of an order made under Sec. 101. Sub-Sec (2) Clause (d) which concerns a right of which he is in possession, may institute a suit for declaration of his right under Chapter VI of the Specific Relief Act 1877." In *Ram Golam* v *Bishnu*, 11 C. W N 48 (50), the High Court held "we are of opinion that it is not necessary for the plaintiff to bring a suit to set aside the entry in the record of rights. He might bring a suit for declaration that the entry contains erroneous statements" See also the case of *Agin Bindh* v. *Mohan*, 30 Cal 20 7 C W N 314 (320-321) See also the unreported case of *Serajul Huq* v *Secretary of State for India*, S. A. 818 of 1919, where N Chatterjee and Panton JJ, *held* that the amount of Court Fees payable on a memorandum of appeal arising out of claim under Sec 111A B T Act, falls under Art. 17, Clause iii, Sch II of the Court Fees Act

Suit for amendment of Record of Rights and Assessment of Rent—A suit for amendment of Record of Rights and settlement of fair rent comes under Sec 7, paragraph iv (c) of the Court Fees Act, therefore *ad valorem* Court Fee is payable calculated on the value of the suit and not the sum of rupees ten as a declaratory suit, *Sreenath* v *Secretary of State for India*, 11 C L J 158: 5 Ind. Cas 141

Status affected by Record of Rights.

Declaration of Title and Injunction—Where the plaintiff sues for a declaration of his title and for an injunction to restrain the Defendant, who was declared by the Settlement Officer to be entitled to collect rent from cultivating raiyats, from so realizing rent, the value of the relief sought is the value of the property, *Krishna Das* v *Hari Charan*, 14 C L J 47: 15 C. W. N. 823 10 Ind. Cas 865

Assertion of Hostile Title.—A claim before a survey officer or an entry in the Record of Rights is an assertion of a hostile title and then the plaintiff must clear his title and get possession before he can claim partition and such suits come under Sec. 7 (iv) (c) of this Act, *Hurnarayan* v. *Suresh*, 63 Ind. Cas. 203: but an unfounded assertion of a proprietory right in the Revenue Court which had no jurisdiction to determine the proprietory right in the land, cannot by lapse of six or twelve years, convert what was an occupancy or tenant title into that of an under

proprietor, *Raja Mohammad Mumtaz Alikhan* v *Mohan Singh*, P. C 30 C. L J 205: 28 C. W. N 840.

Status of an Occupancy Raiyat—See Sch II Art 5, and S 7, paragraph XI of this Act

Occupancy Raiyats—In a suit for declaration that the Plaintiffs are occupancy raiyats and not tenure holders and also for a declaration that the Survey entries describing them as tenure holders are wrong and not binding on them, the court fees payable are as in a mere declaratory suit without consequential relief as any other prayer is redundant, *Tewari Kora* v *Bhupat*, 4 Pat L J 302 50 Ind Cas 298. But where the Plaintiffs in possession of the holding and claiming to be occupancy raiyats brought a suit for declaration that the entry in the Record of Rights describing them as tenure-holders, is erroneous and a nullity, *held that* Sec. 111A of the Bengal Tenancy Act is to be construed strictly and as the Plaintiffs asked for something more than mere declaration and one that is not contemplated by Sec 111A of the Bengal Tenancy Act, they therefore must pay *ad valorem* Court Fees on the valuation of the relief The Plaintiffs Appellants wanted to amend the plaint which was refused *Midnapur Zemindary Co, Ltd* v. *The Secretary of State for India*, 21 C W N. 834: 44 Cal 352: 40 Ind Cas 96

SEC. 104, B T ACT —Suits for a declaration that the Plaintiffs are occupancy raiyats and not tenure holders as recorded, do not come under Art. 17 Sch. II of the Court Fees Act and *ad valorem* Court Fees are to be paid, *Pajiruddin* v. *Secretary of State for India*, 16 C L J 383 Suits for a declaration that the status of the Plaintiffs is that of occupancy raiyats and not tenure holders as recorded under Sec 104, B T Act and settlement of fair rent on that basis, is a suit for a declaration of title with a consequential relief as the provisions of Sec 104 (H) make it clear that such suits are brought to obtain consequential relief, *viz.*, the settlement of fair rent, and the plaint or the memorandum of appeal should be stamped with *ad valorem* court fee, *Trailakyanath* v *Secretary of State for India*, 17 C L J 426 18 Ind Cas 188

Sec. 149, B. T. Act.—Suit under Sec 149 (3) of the Bengal Tenancy Act by a third person is not a title suit and need not be stamped as such Such a suit is either a suit for injunction or else a declaratory suit, *Jagadamba* v *Protab*, 14 Cal 537.

Mortgage.—Where the mortgagee sued to recover the mortgage money and paid Court Fees *ad valorem* on the plaint calculated on the amount claimed and some of the defendants appealed on the ground that the properties are not liable for the mortgage debt, *i e*, to exonerate the lands from liability, held

this is a suit to release lands, therefore, a suit with a consequential relief, and *ad valorem* court fees are to be paid on the value of the debt not exceeding the value of the property, *Venkappa* v. *Narasinha*, 10 Mad. 187. Where a mortgage decree for Rs. 12,200 was passed on compromise and the Plaintiffs sued to set aside the compromise decree, but his interest so affected by the decree was valued at Rs 1,300, *held* that the Plaintiffs were only liable to pay Court Fees assessed upon their share of the property affected by the compromise decree, *Bankey Behary* v *Ram Bahadur*, 4 Pat L. J 101 1918 (Pat) C. W. N. 223 4 Pat L W. 281 44 Ind. Cas 891.

The plaint in a suit for a declaration by the puisne mortgagee, who was no party to the suit by the prior mortgagee who obtained a decree final for Rs 6,818 that the prior mortgagee is not entitled to bring the property to sale and an injunction restraining the Defendant (the relief for injunction was separately valued at Rs. 100 and Court Fees *ad valorem* on that separately paid) from selling the mortgaged properties, is to be stamped *ad valorem* on the amount of the prior mortgaged amount, i e, on Rs 6,818, *Jageshra* v *Durga Prosad*, 36 All. 500 12 A L. J 844 24 Ind. Cas 670 Suit for establishment of Plaintiff's right to 2/3 share of certain property and also for a declaration that such share shall be exempted from a certain mortgage lien falls under Sec 7, iv (c) of the Court Fees Act and Court Fees are to be paid on the valuation of the relief made in the plaint, *Makhan Lal* v *Surja Prosad*, 1885, 5 A. W N 48.

Priority —In a suit for enforcing a simple mortgage bond by sale of the property, the decree of the 1st Court was that the property be sold subject to the mortgage of another Defendant. *Held*, on appeal by the Plaintiff to get rid of the condition of priority of that Defendant's mortgage, that the Court Fees must be paid *ad valorem* on the value of the lien sought to be destroyed (in this case on Rs. 14,000 the mortgage amount) with interest due to that Defendant, *Premsukh Das* v *Shah Gopi Saran*, 4 Pat. L. J. 323: 56 Ind. Cas 786

Suit for declaration of title with recovery of possession. —A suit by plaintiff for declaration of title and recovery of possession of certain revenue paying estates on the allegation that although there is a valid mortgage decree on the properties still the sale of these properties in execution being in contravention of the previous adjustment of the decree, is a nullity and therefore, the decree against the principal mortgagor under Order 34 r. 6 C. P. C. is inoperative, is a suit for possesion of land within the meaning of Section 7, v. (a) of the Court Fees Act and the Court Fees payable are ten times the Government

Revenue Such suits are not suits to obtain a declaratory decree where consequential relief is sought The Calcutta High Court said "The plaintiffs do not seek to set aside the decree nor do they seek to obtain a declaratory decree where consequential relief is sought Their contention is that although the decree was validly made, the circumstances which led up to the sale held at the instance of the decree holders could not in law pass their title to the execution-purchaser, and on that basis, they seek to recover possession of the property No doubt, they seek a declaration that the personal decree could not have been made against them This declaration, however, can only be consequential to the success of their substantial claim in the suit." *Radha Kanta Saha and others* v *Debendra Narain Saha and others*, 40 Cal 880 27 C. W N. 567 33 C. L J 74: 70 Ind. Cas 101 1922 A I R 506 (Calcutta)

Where the plaintiff claimed that he was joint owner of the property in suit with the defendant and that the property had been sold without his concurrence or authority, but framed the suit as one for recovery of possession and for cancellation of sale deed, the Allahabad High Court held that the suit was a suit for possession only, as the prayer for declaration is superfluous and allowed the plaint to be amended (The case *Dhakeswar Prasad* v. *Jiva Chowdhury*, 3 Pat L J. 448 46 Ind. Cas. 385 is not applicable as there the declaratory relief was necessary). *Rup Narain* v *Bishwar Nath*, 44 All. 629: 20 All. L. J. 587: 68 Ind Cas 265 (1921) A I R. 358 (Allahabad). See also *M Ganga Dei* v. *Sukhdeo Prasad*, 22 A L. J 945: 84 I. C. 624: 1924 A I. R 612 (All.); 47 All 78. *In re Seethayamma*, 48 Mad 652

A plaint (or memorandum of appeal) in a suit for declaration of title and recovery of possession, requires *ad valorem* court fees and not ten times the Government-revenue in a revenue paying estate, *Rasik Behary* v. *Hriday*, 1922 (Pat.) C. W. N. 162 I. L. R. 1 Pat. 471.

In a suit for possession and *Wasilat* the Plaintiff obtained a decree declaring his right to possession upon death of his father, held that as the decree had given consequential relief, *i.e.*, relief from the operation of conveyances and mortgages, which on the face of them affected the Plaintiff's interest, on an appeal from the decree the memorandum should bear an *ad valorem* duty, *A. B. Miller* v. *Akhooree Ram*, 15 W. R. 412.

Against licensee.—Where the Plaintiff sued for a declaration of his title and possession of the land and for removing the Defendant (a licensee) and for a permanent injunction on the defendant, restraining him from coming upon the land after removing him therefrom, the Plaintiff valued his suit at Rs 1 for ejectment and injunction and claimed Rs. 46 as damag

and paid court fees *ad valorem* on that valuation, and the defendant objected that the suit should be valued at Rs. 2,200—the value of the land, *held* that as the Defendant is a mere licensee he has no interest in the land. The valuation made is therefore sufficient, *Basiram* v. *Ganesh*, 24 C. W. N. clxvii (notes)

Where the Plaintiff sued on a stamp of Rupees ten for a declaration of his title to land worth more than Rs. 19,000 in the possession of the defendant, that the demarcation by the Revenue Officer is erroneous and for a declaration of his title thereto, the Court was satisfied that the Plaintiff Zamindar wanted to get possession of the land by way of declaration and thereby deprive the adversary of the benefit of the pleadings open to him in an ejectment suit, held that the plaintiff ought to pay *ad valorem* court fees on the plaint, but having regard to the circumstances of the case, refused to allow the Plaintiff to put in additional stamp, *Chokalinga Peshana* v. *Achiyar*, 1 Mad 40

Possession after Declaration that a decree is not Binding.—A suit for a declaration that certain decree was of no legal effect against plaintiff and for possession of the portion sold in execution, is a suit for declaration with possession as a consequential relief Therefore, Court Fee is payable only for the relief regarding possession and no separate *ad valorem* Court Fee is payable on the amount of the decree in respect of which the declaration is sought. In such a case the question is whether one relief is to be taken as consequential to the other or as independent of each other.

The Madras High Court said "The learned District Judge was clearly mistaken in his statement that Sec 7, iv (c) of the Court Fees Act regulated the valuation of the whole suit, since part of the relief claimed was for possession and it had to be valued in accordance with Sec 7 (v), notwithstanding that a declaration also was asked for That is recognized in one of the cases cited by the learned District Judge, *Chinnammal* v. *Madarsa Rowther*, 27 Mad. 480 · 14 M. L J. 343." *Raja Gopal* v. *Vijoya Raghava*, 38 Mad. 1184: 25 Ind Cas. 683: 12 L. W. 824. See also *Shama Prosad* v. *Sheoperson*, 5 Pat. L J. 394, where it was held that the case comes under Section 7, iv. (c) and the Plaintiff must put a reasonable valuation and pay Court Fee *ad valorem* on that valuation. See also *Iswari Dial* v. *Kishen Das*, 1 A W. N. 5 But where in order to succeed in a suit for possession, it is necessary for the Plaintiff to obtain a declaration that a document or decree is void or inoperative, the court fee to be paid must be calculated on the actual value of the property, *Logan Burt* v *Khakhan*, 43 Ind. Cas 962 (Patna).

Declaration of Title as an Adopted Son and Possession.—Where a challenge is thrown on the Plaintiff's title as the adopted son of a certain person and the Plaintiff comes into Court in order to meet that challenge and claims a declaration of his title as an adopted son, and also seeks to recover possession of his adoptive father's property, the suit falls under Sec. 7, iv (c) of the Court Fees Act and not under Sec. 7 (v) of the that section, *Ugra Mohan* v *Lachhmi Prosad*, 5 Pat. L. J 341 : 56 Ind Cas 422 See also the P. C. Case of *Rachappa Desai* v. *Shiddappa*, 24 C W N 33 43 Bom 507 29 C. L J. 452, where *ad valorem* Court Fee was paid on the property sought to be recovered but only Rupees ten was paid in respect of properties in the custody of Collector as in a suit for mere declaration

Reversioner.—Where on the death of the mother, the widow of the last male holder, the daughter instituted the present suit for recovery of possession as reversioner to her father, on the allegation that the documents executed by her mother were illegal and inoperative and fraudulent and not for legal necessity and that the Defendants have no right to resist the Plaintiff's claim to possession of those properties on the strength of those documents and prayed that (*i*) it be declared that the Plaintiff was the sole heir of her father, (*ii*) that it be declared that the Defendants had no right to those properties, (*iii*) that her possession be confirmed in respect of two plots and that she may be awarded possession regarding others by ejecting the Defendants from their wrongful possession, (*iv*) that mesne profits be awarded to her which she assessed at Rs. 21,000, *held*, that the widow being dead the Plaintiff in addition to the declaration necessarily seeks a consequential relief *viz*, possession Therefore the reliefs in the present case clearly come within the purview of Sec. 7, clause iv. Sub-Sec. C, and *ad valorem* court fee upon the valuationof the property stated in the plaint must be paid as this valuation determines not only the jurisdiction of the Court, but also the amount of Court Fees payable, *Khetra Mohan* v *Ganesh Lal*, 6 Pat. L J 101 (105): 61 Ind Cas 565: 2 Pat. L. T. 607. See also *Harbans Sahu* v. *Mt. Lalmoni Koer*, 62 Ind. Cas 36: 1922 A. I. R. 62 (Patna)

A reversioner suing to recover properties from the alienee from the widow after her death, need not ask for a declaration that the alienation is void or is not binding on him. He might claim possession leaving it to the defendant to plead and prove circumstances which will make the alienation binding on him. Such a suit, therefore, comes under S. 7 v. (b) and not under S. 7. iv (c) of the Court Fees Act. *Ramsumran Prasad* v. *Gobind Das*, I. L. R. 2 Pat. 125; 3 P. L. T. 704: 1 Pat. L.

1. 1922 Pat. C. W. N. 291: 68 Ind. Cas. 700: 1922 A. I. R. 615 (Pat.) F. B.

Suit for declaration and for appointment of a Receiver. See also under Art 17, Clause iii, Second Schedule.

A relief for the appointment of a receiver is in the nature of a consequential relief. *Krishnarao v Musst. Chandrabhagabai* 1924 A I R. 316 (Nag), 79 I C 668

Effect of Such an Appointment—Where a receiver is appointed, the appointment operates as an injunction against the parties and persons claiming under them restraining them from interfering with the possession of the receiver except by permission of Court, *Mahomed Zahuruddin v. Mahomed Nooroodddeen*, 21 Cal. 85 (91)

A suit by reversioner for a declaration that certain alienations are not binding on them, and for the appointment of a receiver, is one for a declaration with a consequential relief as the prayer was made to preserve the property from being wasted, and therefore *ad valorem* Court Fee is payable on the valuation by the Plaintiff, *Dodda Sanakappa v Sakravva*, 36 Ind Cas 831; *Harbans Sahu v Lalmoni*, 62 Ind. Cas. 36; 1922 A. I. R 62 (Patna). Where the reversioners sued for a declaration that certain alienations made by the Hindu Widow will not affect their interest after her death, for appointment of a receiver and for restoration of the property to *status quo ante* to certain arbitration proceedings, the plaint is to be stamped with *ad valorem* court fees calculated on the valuation of the suit by the Plaintiffs, *Lakhmi Das v Musst. Draupadi*, 134 P W R. 1913: 232 P L. R. 1913: 93 P. R. 1913: 19 Ind. Cas 839 The plaint in a suit contained two prayers—1st, that certain sales by the official receiver in favour of the Defendants be declared null and void and not valid in law; 2nd, that a fresh receiver be appointed and the properties be made over to him On the first prayer the Plaintiff paid Rupees ten as court fees, *i.e.*, for the declaratory relief and valued that relief for the purposes of jurisdiction at Rupees 38,000 and on the second prayer, he valued the relief at Rupees 100 and paid ad valorem court fee, on that valuation, *i.e.*, Rs. 7-8, held that the proper court fee has been paid on the plaint and court fees *ad valorem* on rupees 38,000 need not be paid, *Ram Swamy v. Subramania*, 32 M.L.J. 447. But a simple suit for injunction and for appointment of a receiver cannot be valued and therefore can be filed if the plaint is stamped with a court fee of Rupees ten, but where it is capable of valuation the Court is to call for additional stamps, *Manmathanath v.*

Rohillmoni, 27 All 406 (1905) 25 All W. N. 6: 2 A L. J. 84

A suit by the heirs in reversion of a deceased Hindu for declaration that (1) an alienation by the 1st defendant (the widow) was not binding on them, and (2) for the appointment of a receiver to take possession of the estate from the widow and manage it during her life-time, is not a suit for a declaration with a consequential relief as the prayer for the appointment of a receiver did not rest upon the specific alienation sought to be impeached but for an entirely different purpose. *Karuppa Tevar v. Angammal and others*, 51 M. L. J. 67; 96 I C 120, 1926 A I R. 678 (Mad)

Suit to Set aside Compromise.—Where the Plaintiff brought a suit to set aside an adoption and thereby to set aside the deed of *Solenama* (deed of compromise) entered into between the parties and no valuation was put upon the plaint which was filed with a Court Fee of Rupees ten, held, that the Plaintiff ought not to be allowed to frame her suit in this way, i e, to seek to set aside the *Solenama* and thereby aim at possession of the immovable property and bring her suit upon a stamp of Rupees ten as if it was a suit for setting aside adoption only, *Bama Soondaree v. Surjo Coomer Ray*, 22 W. R 338.

Where the plaintiff brought a suit to set aside a compromise decree based on a mortgage bond but he was entitled to a portion of property affected by the mortgage, *held* that the Court Fee is payable on the value of the share of the Plaintiff but not on the value of the entire property, *Bankey Behary* v. *Ram Bahadur*, 4 Pat L W. 281: 1918 (Pat.) C. W. N. 223: 4 Patna L J. 191 44 Ind. Cas 491. A prayer that previous *Solenama* and decree may be invalid is prayer for a consequential relief, *Haro Gouri* v. *Dukhi*, 5 Ind. Cas 582 (Calcutta). See also *Satis Chandra* v. *Kalidasi*, 26 C. W. N. 177; 34 C L J 529

A compromise is just as binding on the parties thereto as a decree after a contentious trial, but it is equally well settled that a consent decree cannot have greater validity than the compromise itself, *Amrita Sundari* v. *Serajuddi*, 19 C. W. N. 565 (570).

Suit to Set aside Decrees and Sales thereunder.—The Plaintiff brought a suit for declaration that a certain share inherited by her from her mother is not affected by decree and sale; and if she is found not to be in possession then the same be awarded to her She valued the relief at Rupees 1,025 but paid a court fee of Rupees four and annas eight calculated at ten times the Government Revenue, held that *ad valorem* court fees on Rupees 1,025 are payable as the property is

Mokarari property, Bibi Kulsum v. *Muhammad Hamid*, 45 Ind. Cas 928 (Pat). Where the Plaintiffs who are Hindus governed by the Mitakshara School, sued for a declaration that the decrees in favour of the decree-holder-Defendant, amounting to over Rupees 22,000, obtained by Defendant—decree-holders against themselves and their relatives was bad so far as they are concerned as they never took the loan, were not benefitted by the loan ; and the Plaintiffs were not properly represented in the suit by the Defendants—decree-holders and that share in the ancestral family property amounting to annas three and valued at Rupees 9,000 was improperly sold in execution of the said decree , and prayed that (*i*) the orders be declared fradulent (*ii*) the decrees be set aside (*iii*) sales be declared fraudulent (*iv*) possession of the properties he given to them. They paid court fees calculated on ten times the Government revenue. The trial Court dismissed the suit holding that court fees should be paid on Rs. 22,000. The High Court on appeal, following the dictum of the Privy Council in *Phul Kumari* v. *Ghanshyam*, 12 C W N 169 · 35 Cal. 202 where their Lordships said that "the value of the action must mean the value to the plaintiff. But the value of the propesty might quite well be Rupees 1,000 while the execution debt Rupees 10,000 It is only if the execution debt is less than the value of the property that its amount affects the value of suit " *held* that the court fees payable are on the value of the property, *i e.*, on Rupees 9,000 and set aside the order of the trial Court, *Ganesh* v. *Sarada*, 19 C. W. N. 895: 42 Cal. 370: 30 Ind Cas 111 See also *Venkappa* v *Narasinha*, 10 Mad. 187

Valuation.—A suit, to set aside a sale under Public Demands Recovery Act coupled with a claim for a share in the property sold, is to be valued on the value of the entire property to be sold and not on the value of the share claimed. *Pran Krishna* v. *Nitya Gopal*, 1924 All. I. R. 239 (Cal.).

Suits to Set Aside Decrees as Fraudulent.—Suit to set aside a mortgage decree valued at Rupees 10,000 as fraudulent and for an injunction to restrain the Defendant from executing it by sale of the mortgaged properties, should be valued at the sum sought to be realized under the decree, because if the injunction is granted, plaintiff is benefitted to the extent of the decree and not the value of the mortgaged properties and *advalorem* court fees are to be paid on that valuation, *Musst. Bibi Umalul* v. *Musst. Nauji*, 11 C.W N 707 (711): 6 C. L. J. 427. Where the suit was for a declaration that the decree and sale were fraudulent and also for an injunction, and the suit was valued at the amount recoverable under the decree, *held*, that the

valuation was proper as the party could put his own valuation on the plaint, *Jogendra* v. *Toriautnessa Bibi*, 35 C. L. J. 144: 62 Ind. Cas. 685.

A rent-decree was obtained by the 1st Defendant against 2nd Defendant and the holding was advertised for sale; thereupon the Plaintiff brought this suit for declaration that the rent decree is fraudulent and collusive and to save the holding from liability of auction sale. The Plaintiff afterwards withdrew his 2nd and 3rd prayers when the question arose whether the suit is maintainable as a mere declaratory suit. The Calcutta High Court said. "The Plaintiff is bound to ask for a consequential relief, namely, either to have a perpetual injunction granted to restrain the 1st Defendant from executing it. As pointed out by this Court in the case of *Gour Mohan* v *Dinanath*, 25 Cal 49, it is necessary for the Plaintiff to ask for a consequential relief in a case of this description, because if consequential relief is not asked for it would be open to the decree-holder to proceed with the execution of the decree" and their Lordships held that the valuation for the purpose of Court Fees should be at the amount at which the decree sought to be set aside was obtained, and the plaint was allowed to be amended. *Thakur Prasad* v *Punkal Singh*, 8 C L J 485 See contra, *Rafiquddin* v *Asgar Ali*, 63 Ind Cas. 38 (Patna), where it was held that although the suit may not be maintainable still nothing beyond Rs 10 in court fees can be demanded In a suit in which Plaintiff asked for a declaration that a decree obtained against him and a sale held thereunder are void on the ground of fraud, held, if sale takes place, the loss to the Plaintiff was the value of the interest in the property, and therefore Court Fee *ad valorem* on the value of the share, is to be paid whatever may be the amount of the decree (prayer for redemption considered as a prayer for consequential relief), *Pandit Brij Krishna* v *Chowdhury Murli Rai*, 4 Pat. L. J. 703. In a suit for declaration that a decree amounting to Rupees 2,794 should be declared forged, illusory and unfit for execution and also for declaration that the family property valued at Rupees 7,000 was not liable to be sold in execution of that decree, held that Court fees *ad valorem* on Rupees 2,749 should be paid *i.e*, on the value of the decree, *Harihar Prasad* v. *Shyam Lal*, 40 Cal. 616· 21 Ind. Cas 404; See also *Govinda* v. *Dhekku*, 56 Ind Cas. 550; 19 N L. R. 15 and the judgment on *Reference under* S 5 of the Court Fees Act in (S. A F. 6029 of 1923) *Sheikh Karim Baksha* v. *Ishan Chandra Chakrabarti and others* decided by B. B Ghose J. on 10th July, 1923 (unreported).

A suit to set aside a decree on the ground of fraud falls under S. 7, iv (c) of the court Fees Act and *ad valorem* court

fees must be paid on the value set on the claim for the purpose of jurisdiction, *Baldeo Prosad* v. *Ghasi Ram*, 16 N. L. R. 84: 58 Ind. Cas. 360

Not binding.—In a suit for declaration that an instrument of mortgage or sale and the decree based thereon is not binding and for an injunction restraining defendants from executing the same, the court fee is payable *ad valorem* and the Full Bench held, that a suit for declaration that an instrument of mortgage or sale executed by the plaintiff or a decree that has been passed against the plaintiff for a debt contracted by him is not binding on him, is a suit for a declaration with a consequential relief, *Arunachalam* v. *Rangasawmy*, 38 Mad. 922 F. B.: 28 M. L. J. 118: 17 M. L. T. 154: 1915 M. W. N. 118: 28 Ind. Cas. 79 See also *Nandu Mal* v *Salig Ram and others*, 1922 A. I. R. 236 (Lahore).

See also the case of *Umrao* v. *Hardeo*, 29 All. 418 as interpreted in *Thakur Prosad* v. *Punkal Singh*, 8 C. L. J. 485 (487).

Suits under Mitakshara Law to set aside Decrees.—Suits by sons to set aside decrees based on mortgages executed by the father (governed by Mitakshara law) and to recover possession is a suit for declaration with a consequential relief and therefore the Plaintiff is bound to put a reasonable valuation on the claim and pay *ad valorem* Court Fees on that valuation, *Shama Prosad* v. *Sheopersan*, 5 Pat. L. J. 394

A suit by members of a Joint Hindu family governed by Mitakshara law for declaration that the attachment and sale of joint ancestral property on a bond by the *Krta* is null and void, is a suit for a declaration with a consequential relief. *Surendra Nath Sing* v. *Shambehari Sing*, I. L. R. 1 Pat. 197.

Partition.—The plaint in a suit for declaration that the previous partition carried out under the terms of the previous decree be reversed and all the properties be brought to *hotchpot* for a fresh partition, must be stamped with an *ad valorem* court fee as the suit is for a declaration with a consequential relief, *viz*, that the properties be restored to their original state as joint property and then brought under partition, *Huro Gowrie* v. *Dukhi*, 5 Ind. Cas. 582. Where the Plaintiff sued for cancellation of a previous deed of partition on the ground of fraud and unfairness, for declaration of exclusive title to a hardware business, its assets and properties acquired from its income, for declaration of joint title to other properties, for partition and accounts, and other incidental reliefs and the trial Court cancelled the deed of partition, and determined the question of title to properties in suit and rendered the defendant liable for accounts, held, that the case does not come under clause iii of Art. 17 of Sch. II of the Court Fees Act, but the suit is a

suit in which consequential relief has been claimed and the plaint or the memorandum of appeal is to be stamped with *ad valorem* court fees, *Satis Chandra* v. *Kali Dasi*, 26 C W. N. 177. 34 C L. J. 529

Partition and Possession on Establishment of Title.—The court fees stamp in a suit for partition and possession of the Plaintiff's share of joint family property is an *ad valorem* fee on the value of the Plaintiff's share, *Balavant* v. *Laxman*, P. J 13 (1892). Where the suit is to establish plaintiff's title to a third share and possession and partition, it was held that *ad valorem* court fees are payable, *Walliullah* v *Durga Prosad*, 28 All. 340: 26 All W N. 38. 3 A. L. J 181; *Makhan Lal* v. *Surja Prosad*, (1885) 5 A W. N. 48 If the suit be in essence a suit to obtain a decree for money or a decree for immoveable property then an *ad valorem* court fee is payable, *Govinda* v *Parmeswar*, 49 Ind Cas. 115 "If in the very forefront of their claim the plaintiffs ask the Court for declaration of their title and possession, then it seems to us that they are claiming under the guise of a partition suit, a declaration of their title which is the proper subject-matter of a title suit and therefore *ad valorem* court fees are payable," *Rachhya* v *Musst Chandoo*, 6 P L J 662; 3 P L T 293, 1922 (Pat.) C. W N 65 65 Ind Cas 294 1923 A I R 113 (Patna). Followed in *Kanhaiya Lal* v *Baldeo Das*, 85 I C 538; 1925 A. I. R 703 (Patna) "If the Plaintiff is not in possession of any part of the property, she is not entitled to sue for partition without at the same time suing for possession of her share —a course entailing payment of *ad valorem* court fees both on the plaint and the memorandum of appeal," *Rangamoni* v. *Jogendra*, 9 C L J. 128 A suit for partition is not a substitution of a suit for ejectment Where the Plaintiff has got his name registered under the Land Registration Act, the weight to be given to that depends upon the facts of each case, *Loke Nath* v. *Dhakeswar*, 21 C L J. 253. In a suit for partition if it is established that he is not in possession at all of any portion of the joint property, that there had been a complete ouster, he must sue for recovery of possession and partition and pay *ad valorem* court fees upon a plaint appropriately framed for the purpose The true distinction between two classes of cases, is that in one class, the plaintiff really prays for ejectment, in the other he claims a division of lands, of part of *which he is in actual occupation and over the remainder of* which he is in constructive possession through the co-owners. There is no foundation for the contention, that mere denial of the title of the plaintiff converts a suit for partition into a suit for possession, *Bidhata Ray* v. *Ram Chariter*, 12 C. W. N. 37 (41): 6 C. L J. 651; *Sashi Bhusan* v. *Rai Yatindra Nath*,

15 C. L. J. 445: 10 Ind. Cas. 463; *Rajani Kanta Bag* v. *Rajabala Dasi*, 29 C. W. N. 76; 40 C. L. J. 150; 1924 A. I. R. 969 (Cal.).

Where it appears that the defendants are not in possession of a portion of the property then a suit for partition is really a suit for recovery of that portion and a court fee *ad valorem* on that share must be levied, *Dipchand Rai* v. *Chhetri Lal*, 1 Pat L. T. 529, 56 Ind. Cas. 570.

Suit by Minor.—In a suit by a minor for a declaration that a mortgage deed executed in his name by his guardian is invalid against him and also for cancellation of the deed and injunction to restrain the defendant from enforcing the terms of the deed, the Court Fee payable is to be calculated on the liability under the deed of the minor and the valuation for the purpose of jurisdiction is also to be determined by the same criterion. The plaintiff cannot be allowed to fix a lower and arbitrary value, *Devidas* v. *Ramlall*, 7 N. L. R. 190: 13 Ind. Cas 864 A suit by a member of a Malabar *tarwad* on attaining majority to set aside a *karar* entered into during his minority by the adult male members of the *Tarwad*, is a suit for mere declaration and not one for a declaratory decree with consequential relief, because though a transaction, which is valid, may, under certain circumstances, be cancelled by a Court, at the instance of a person not a party to it on the ground that it would throw a cloud upon his title, it is not true that such a person must get rid of the transaction by having it actually cancelled, in order to rely on its invalidity as against him. A *karar* is binding only if consideration passed in a valid exercise of power by the *Karnarvan* otherwise it is void, *Chingacham Vittil Sankaram* v. *Chingacham Vittil Gopala*, 30 Mad. 18 1 M L T 412.

A suit by the plaintiff (a minor at the date of the first suit) for a declaration that the decree (mortgage) passed against him is not binding on him as having been obtained by fraud and that the old case he re-started from the point at which his guardian confessed judgment is a suit for a declaration with a consequential relief and hence should bear *ad valorem* court fees, *Harnam Singh* v. *Hyat*, 1925 A. I. R. 346 (Lah.).

Suit on behalf of a lunatic.—Where the wife of a lunatic, sued as manager of the properties of the lunatic to set aside a deed of gift executed by her husband on the ground that the deed was null and void, *held*, that the suit is one for declaration with consequential relief and court fee *ad valorem* are payable on the valuation under Section 7, iv (c) of the Court Fees Act. The suit was framed as a suit for declaration with a consequential relief for possession, *Ganga Dei* v. *Sukhdeo*

Prosad, 22 A. L. J. 945 (1924) A. I. R. 612 (All.): 84 I. C. 624.

Valuation.—A suit to set aside a decree falls under Section 7, iv. (c) of the Court Fees Act and the Plaintiff can put his own valuation. Under Section 7, iv (c) of the Court Fees Act, a Court cannot reject, for the purpose of jurisdiction, the valuation made by a party for the purpose of court fees, even if his valuation is arbitrary, *Pilla Kakkadu* v. *Vedulla Chenarayya*, (1918) M. W N 562 51 Ind Cas 536 24 M L T 254. But if possession is asked for in addition to declaration that a decree is void then the court fee payable is only as regards relief regarding possession and no separate *ad valorem* court fee is payable on the amount of the decree in respect of which the declaration is sought, *Raja Gopala* v *Vijaya Raghava*, 25 Ind. Cas. 683, 38 Mad 1184.

N B—If the suit be for a declaration that the decree is null and void then according to some decisions it is a suit without a consequential relief and is governed by Art 17, Clause iii of Sch II of the Act, *Shrimant Sagarji Rao* v *S Smith*, 20 Bom 736 The Calcutta High Court took the same view in *Zinnatunnessa* v *Girindra*, 30 Cal 788; *Bagala Sundari* v. *Prasanna*, 21 C W N 375 35 Ind Cas. 797 The former case was explained in *Umatul* v *Nauji*, 11 C W N 705 (707) as Rupees ten was payable only because no consequential relief was prayed for See also *Ganeshilal* v *Beni Pershad*, 22 P W R 1911 47 P L R 1911 10 P R 1911

Patni Sale.—A suit for reversal of a sale held under Patni Regulation (Reg VIII of 1819) under Section 14 of that Regulation, is not a suit for pure declaration within the meaning of Sch II, Art 17, clause iii of the Court Fees Act, but is a suit for a declaration with a consequential relief, as under the provisions of Sections 14 and 15 of the Regulation VIII of 1819, a suit for the reversal of a putni sale is not a suit for a declaratory relief within the meaning of Art 17 of Sch. II of the Court Fees Act, *Tara Prosonno Chongdar* v. *Nrisingha Moorari Pal and others*, 51 Cal 216 28 C W N 683: 39 C. L. J. 212.

Valuation—Where a *putni* was sold for arrears of rent under Reg VIII of 1819, the plaintiff, in suing to set aside the sale for his own share, is to value the suit on the value of the entire property to be sold *Unnoda Pershad Ray and others* v. *Messrs. Erskine and Co.*, 21 W. R. 68: 12 B L R. 370; *Suresh Chandra Mukhopadhya* v *Akkori Singh*, 20 Cal. 746 (753).

Revenue Sale.—Where the Plaintiff brought a suit to set aside the revenue sale of a certain *Taluq* in part of which he is interested but framed the suit as one for mere declaration only and stamped the plaint with a Court Fee of Rupees ten only, held, when the plaintiff asks for relief to have the auction sale

set aside, the plaint is to be stamped as one for the recovery of the property, *Drapu* v *Ishan*, 9 C L R. 231. Where the Plaintiff brought a suit to set aside Revenue sale of an estate alleging that he is in possession of the property and prayed (*a*) that by setting aside the said illegal, unjust and irregular sale, it may be held and declared that the plaintiff's rights have not thereby been destroyed nor has it been jeopardised in any way, (*b*) that it may be declared that the plaintiff has the right to and possession of the said *Taluq* and he stamped the plaint with a court fee of Rupees ten, held that this is a suit for a declaration wherein a consequential relief has been prayed for and that the plaint is to be stamped *ad valorem* as the plaintiff seeks to set aside an alleged illegal auction sale and a declaration of right and possession in respect of the property in dispute, *Mahomed Takibuddi* v *The Collector of the District 24-Perganas*, 6 C W. N. 157. Approved in *Tara Prosonno Chongdar* v. *Nrisingha Moorari Pal*, 51 Cal. 316, *supra*. Where the holder of an eight annas *Makarari* interest in an estate which was sold for arrears of Government Revenue, sued (*i*) for a declaration that the sale was invalid by reason of fraud and irregularity, that the necessary processes were issued and served irregularly, and that in consequence of the said irregularities the estate was sold for a very low price, (*ii*) he asked for an injunction to restrain the defendant from taking possession; (*iii*) that the possession of the plaintiff be confirmed and if it be found that he has lost possession then the same be given to him, held, that the Plaintiff should pay *ad valorem* court fees on the value of the estate, *Raja Dhakeswar* v. *Jiva*, 3 Pat. L. J. 448. 46 Ind Cas 385, but it was held in *In the matter of cross objection in F. A. 128 of 1922* that such a suit is one for possession only. Walmsley and B. B. Ghose JJ., decided on 15th Dec. 1924 (unreported).

Restitution of Conjugal Rights.—When the Plaintiff seeks for a declaration that the Defendant is lawfully married to him and that she should be ordered to live with him, the case comes under Section 7, paragraph iv. Clause (c) of the Court Fees Act, *Aminul Hossain* v *Khairunnessa*, 28 Cal 567. Although in the cases of *Golam Rahaman* v *Fatima*, 13 Cal. 232, and *Moula Newaz* v. *Sajidunnessa*, 18 Cal 378, the High Court held that a suit for restitution of conjugal rights is incapable of valuation and in the case of *Aklemunnessa* v. *Mahomed Hatim*, 8 C. W. N. 705: 31 Cal. 849 it was held that the suit cannot be instituted in the Court of the Munsiff, still in the case of *Jan Mahamad* v. *Masher*, 34 Cal. 352: 11 C. W. N. 458: 5 C .L. J. 400, the High Court held that the Plaintiff, in the absence of rules framed under Section 9 of the Suits Valuation Act, can put any valuation he likes and stamp

his plaint with *ad valorem* court fees calculated on that valuation See also the Full Bench Case of *Jafr Hossain v. Khurshed*, 28 All. 545 26 All W N 99 3 A L J. 206, where it was held that the value of such a suit is the value which the plaintiff chooses to put on it But again it was held in the case of *Aisha v Faiyaz*, 8 A L J 889 11 Ind Cas 186, that a court fee of Rupees ten is payable

Restitution of Property.—Where the Plaintiff sued to recover mortgage money on the basis of a mortgage bond executed by the mother of Defendant No 1, a Mahomedan, and on behalf of her two minor daughters, Defendants 2 and 3, but not as their guardian and wanted to make them liable but during the trial it was found that the loan benefitted the Defendants 2 and 3, held that the minors are to make restitution of the money so far as they are concerned, and the appeal cannot be filed on a stamp of Rupees ten but *ad valorem* court fees should be paid on the amount due on the shares of the minors, *Moyna v Banku*, 6 C W N 667 Orders of restitution under Section 144 C P C (Act V of 1908) come under Section 47 (1) C P C and a court fee of Rupees two only is payable on the memorandum of appeal to the High Court under Art. 11, Sch II, *Madan Mohan* v. *Nagendra*, 21 C W N. 544, *Gangadhar v Lachman*, 11 C L J 541 This is also the view taken by the Patna High Court in M A 142 of 1917 (unreported) See also *other cases under Art. 11, Sch. II of this Act*

Suits Relating to Trust.—As for public Trusts See under Art 17, (vi) second schedule.

Shebaitship—Suit for a declaration that the Plaintiff is the sole *Shebait* and for an injunction to restrain the Defendant from interfering with his possession of the endowed property and also for a declaration that the Defendant is not the *Shebait* of the idol, falls within Section 7, paragraph iv Clause (c) of the Court Fees Act and the plaint is to be stamped with *ad valorem* court fees calculated on the valuation of the properties, *Raj Krishna v Bepin Behary*, 40 Cal. 265. 17 C. W. N. 591: 16 C L J 194 17 Ind Cas 162. Where the plaintiff sued for declaration that he is the sole *Shebait* of the endowed properties and that the Defendants who had been constituted joint *Shebaits* under the compromise decree had not been validly appointed and that the compromise decree is inoperative and also asked injunction on the Defendants to restrain them from interfering with his management, the plaint is to be stamped with a court fee *ad valorem* on the valuation made by the plaintiff, *Mohendra v. Dinabandhu*, 19 C. L. J. 15: 21 Ind. Cas. 771. But where the Plaintiff is out of possession, a prayer for an injunction is insufficient, he must also ask for possession

as an injunction is a discretionary relief and cannot be claimed by a Plaintiff when he does not seek possession against Defendants in possession, *Rathnasebapathi*, v. *Ramasami*, 23 Mad. 452. See also *V. Ramadas* v. *K Hanumantha*, 36 Mad. 364; 21 M. L. J 952, 12 I C 449. Where the Plaintiff sued to obtain a declaration that he is entitled to have the exclusive management of certain *devasthan* moveable and immoveable properties attached to an idol, *held* that the real object being to obtain an injunction also and as injunction is a consequential relief the case comes under Section 7, iv (c) of the Court Fees Act and *ad valorem* court fee is payable calculated on the value of the relief claimed, *Raghunath* v *Gangadhar*, 10 Bom. 00. See also *Manni Lal* v. *Radhey Gopal*, 23 A. L. J 344; 47 All. 501; 1925 A I R 602 (All) where the prayers were that (1) it may be held that the defendant has no power to supervise and manage the properties of the plaintiffs 1 and 2 and it may be declared that the plaintiff no. 3 is the lawful manager of the plaintiffs 1 and 2, (2) that the defendant be restrained by means of a perpetual injunction from supervising and managing the properties of plaintiffs 1 and 2 and from entering on the properties of the plaintiffs

Removal of Trustee.—Where the suit is for the removal of M as manager and for appointment of the Plaintiff as manager of the property, held that the Plaintiff was not entitled to sue for removal of M without praying for his ejectment from the property, *Sanachella* v *Manika*, 8 Mad 516. See also *Chokalingapeshana* v *Achiyar*, 1 Mad 40 Where the Plaintiffs ask for a declaration that a mutwalli had been guilty of misfeasance and asked to have her removed from the *mutwalliship* and themselves appointed in her place whereby they would have been entitled to a share in the produce of trust money, the High Court held "The plaintiffs ask for a distinct and important consequential relief; they ask not only that the defendants may be declared to have wasted the endowment, and thereby to have destroyed the trust, but also that she may be turned out of her *mutwalliship* and they the plaintiffs, be appointed in her room The Plaintiffs say that what they claim does not admit of being properly estimated at a money value, but this is not so Under the *towliatnama* the *mutwallis* were to receive six-twenty-eights of the produce of the estate, a very considerable sum and the plaintiff's claim to this share as an appurtenance to the office of *mutwalli* was easily to be estimated in money. I am of opinion that the plaint ought to have been engrossed on a stamp of proper value," *Delroos Banoo Begum* v. *Nawab Syed Ashgar Ali*, 23 W. R. 453: 15 B. L. R. 167 (187). Where although no emoluments are attached to the office of the trustee, still if the suit be for the purpose of con-

trolling the endowment and also for removal of the trustee from the management for the misconduct of the trustee, the valuation for the purpose of court fees was also regarded as valuation for the purpose of jurisdiction, *Omrao Mirza* v *Jones*, 10 Cal. 599. 12 C L R 148.

Suit to Set Aside Deeds.—See *Mahomed Masik* v *Malkai M U. Badshah Mehal Saheba*, 10 Cal 380, *supra*

Suits Arising out of Proceedings under the Land Registration Act. (B. C. Act VII of 1876.)—See Art 17 Clause ii Sch II of the Act The weight to be given to the registration of the name of the plaintiff in the proceedings under the Land Registration Act depends on the facts of each case, *Loke Nath* v *Dhakeswar*, 21 C L J 253 Where the Plaintiff sued, after an adverse order by the collector, for declaration of his title to the land, alleging, that he is in possession, it was held that he must also seek for possession otherwise the suit is barred as he does not seek further relief as required by Section 42 of the Specific Relief Act, *Raj Narayan* v *Shyamnanda*, 26 Cal 845 But the above decision was upset on review and it was found on remand that the plaintiff is in possession and the Calcutta High Court held when the case came back again after remand that if a party be in possession by receipt of rent from tenants then "he must be deemed to be in constructive possession till the tenants refuse to pay him rent Section 89 of the Land Registration Act clause (a) contemplates a regular suit by the defeated party, either for possession or for a regular suit by the defeated party, either for possession or for declaration of title to immovable property. Therefore, the plaintiff can sue only for declaration of his title without asking for any further relief. *Shyamanand* v. *Raj Narain*, 4 C L J 568 (572) 11 C. W N 186 (189).

The effect of the order under Section 59 of the Land Registration Act is stated in Section 62 of that Act to be that of settling the actual possession," that is to say, of determining that the plaintiff in the present case was not in possession of the property which forms the subject of the present suit." Therefore, a suit for a mere declaration is barred by Section 42 of the Specific Relief Act *Ram* v. *Janki*, 12 C L. R. 136 In the following cases it was held that a prayer for possession was necessary, *Omurunnessa* v. *Dilwar*, 10 Cal. 380, *Fakir Chand* v *Ananda Chandra*, 14 Cal. 586 Mutation of name by itself does not create any proprietory rights *Chokhey Singh* v. *Jote Singh* L R. 36 I. A 38; 31 All. 73 ; 6 A. L. J. 100 ; 11 Bom C. R 69 ; 13 C W. N. 274 ; 9 C. L. J. 151 ; 29 M. L. J. ; 323 ; 12 O. C 288 ; 1 I. C. 166 P. C

Succession as Heir.—Where the plaintiff sued to establish

his right as heir of her deceased son and to set aside a certificate under Act xxvii of 1860 granted jointly to her as well as to the defendant, with a view to being permitted to draw interest on Government Promissory notes belonging to the estate of the deceased, *held* that as consequential relief was to follow the declaratory decree sought, the stamp of Rupees 10 prescribed by Art. 17, Clause iii of Sch. II of the Court Fees Act, *is not* sufficient for the plaint, *Mokhoda* v *Nabin Chandra*, 16 W. R. 259 Where the Plaintiff sued the Defendant, a co-widow, for declaration that she is entitled to share equally with the co-widow, the properties left by her husband, *held* that the Plaintiff was bound to sue for a specific share and she must pay *ad valorem* court fee on her share, *Musst. Ganesha* v. *Musst Darobati*, 20 P. R. 1875.

A suit for a declaration that the plaintiff was the owner of certain *Toda Giras Hak* annuity of a certain amount received by a certain lady as heir and as such entitled to recover the same, comes within Section 7, iv (c) and court fees payable is *ad valorem* on the valuation by the plaintiff *Bhimsangji Chhatrasangji* v. *Dowlatsangji Hamersangji*, 27 Bom. L. R 247, 1925 *A. I. R. 282 (Bom)*

Challenge to Title.—Where upon a challenge being thrown on the title of an adopted son, he came to Court with a claim for declaration of his title and recovery of possession of property left by adoptive father, the suit came under Section 7, iv (c) of the Court Fees Act, *Ugra Mohan* v. *Lachmi*, 5 Pat. L. J 339 50 Ind. Cas 422

Wills.—The plaint in a suit to set aside a will as a forged document and for confirmation of possession, is to be stamped with Court Fees *ad valorem* according to the valuation of the subject matter, *Jay Narayan* v. *Grish Chandra*, 22 W R. 438: 15 B. L. R. 172. See also *Dinabandhu* v *Rajmohini*, 16 W. R. 213: 8 B L R. App. 32. Where the Plaintiff simply sued for a declaration that the will by the deceased is genuine and that *a certificate under Act xxvii of 1860* was erroneously *granted*, it was held, a court fee of Rupees 10 is sufficient as no consequential relief was necessary, *Gangamoni* v *Gopal Chandra*, 19 W. R 214. During the lifetime of a testator a simple declaration as to any will by the testator is sufficient, but after the death of the testator will becomes operative and the person seeking to avoid it must sue for its cancellation, *Hukam Singh* v. *Gyan Devi*, 36 Ind. Cas. 95: 87 P. R. 1916: 13 P. L. R. 1917: 127 P. W. R. 1916. See also *Hakim* v. *Musst. Mahtab*, 109 P. R. 1893, which was a case of a suit by a reversioner.

Valuation.—Where a plaintiff sues for a declaratory decree and asks for a consequential relief, and puts his own valuation

upon that consequential relief, then for the purpose of court fees and also for the purposes of jurisdiction, it is the value that the plaintiff puts upon the plaint that determines both" *Sunderabai* v. *Collector of Belgaum*, L R 46 I A 15, both" 43 Bom. 376; 23 C. W. N 753 1919 M W N 254 21 Bom L. R. 1148 52 I C 897 P C

In cases falling under Section 7 iv (c) of the Court Fees Act, the plaintiff must value in his plaint the relief sought and the plaint must be stamped according to such valuation *Sit Soe and others* v *Ma Thin*, 1924 A I R 378 (R)

PARAGRAPH (iv) d —Injunction.

Note —This clause applies only to suits for perpetual and mandatory injunction As regards orders for injunction under Order 39 C P C, an appeal lies as an appeal from order and consequently *ad valorem* court fee is not necessary

See also under "declaration and injunction" *supra* under Section 7 iv (c)

In *Gangadhar Misra* v *Rani Debendrabala* I L R 5 Patna 211, 94 I C 22 1926 A I R 249 (Patna) the Patna High Court held that a prayer for an ad interim injunction in a suit for declaration is a prayer for a consequential relief

To Stay Batwara Proceedings.—Suit by an allottee under a private partition to stay subsequent partition proceedings under Bengal Regulation XIX of 1814 and to have his possession confirmed, should be considered as one for a declaratory decree or something in the nature of an injunction and therefore the plaint should not be stamped according to the value of the entire estate *Joynath* v *Lal Bahadoor*, 8 Cal. 126; 10 C. L R. 146

Suit under S. 149 of the Bengal Tenancy Act.—The institution fee in a suit under Section 149 (3), of the Bengal Tenancy Act is *ad valorem* on the rent deposited *Trailokya Mohini Dassi* v *Kali Prasanna Ghose*, 11 C. W. N 380 (382). But it was said in that case that it could hardly have been the intention of the legislature that a simple suit such as Section 149 Cl. 3 of the Bengal Tenancy Act appears to contemplate, should develop into a suit involving intricate questions of title. A suit contemplated by this section is a suit with reference to the money deposited in Court and for an injunction restraining the paying out of the money. It does not contemplate a suit for the establishment of the relation of landlord and tenant, *Haranath Banerji* v. *Ananta Dasi*, 9 C. W. N. 492. A suit under this sub-section is in the nature of an interpleader suit; the question of title and possession may be incidentally

into *Gurudas Rakhit* v *Kumud Bandhu Ray*, 7 C. L. J. 40 (notes).

"A suit under section 149 (3) of the Bengal Tenancy Act is not a title suit and need not be stamped as such. It is in the nature of a suit for an injunction under the Specific Relief Act or else a declaratory suit." *Jagadamba Devi* v. *Pratap Ghose*, 14 Cal. 537 (539). See also the case of *Rubiunnessa* v. *Gooljan Bibee*, 17 Cal. 829, where it was also said that the object of Section 149 was to prevent tenants being harassed in disputes between rival claimants to the land.

In a suit under Section 149 of the Bengal Tenancy Act unless the plaintiff establishes his title and possession he is not entitled to the order restraining payment out of the money under clause (3), *Kazi Mahomed Mazhar* v *Sheikh Kadir*, 11 C. W. N. 128 (note).

Injunctions.—Where the plaintiff in a suit under Section 539 C P C (Act XIV of 1882) asked for possession and also for an injunction which he valued separately at Rs. 100, *held* that the plaintiff is to pay court fees *ad valorem* on that valuation, *Thakuri* v *Brahma Narain*, 19 All 60

Mandatory Injunctions—Mandatory injunction to demolish a house must be valued separately and *ad valorem* court fees are payable thereon, *Jogal Kishore* v *Tale Singh*, 4 All. 329

Account and Injunction.—A suit for a declaration that the plaintiff is entitled to require the defendant to account to him and to permit him to inspect the account book, and also for a positive order in the nature of a mandatory injunction for the protection of defendant's books and property in their hands, should be considered as a suit to obtain a declaratory order where consequential relief is prayed and also a suit to obtain an injunction, *Manohar Ganesh* v. *Bawa Ram*, 2 Bom 219; *Raghunath Ganesh* v. *Gangadhar*, 10 Bom. 60

In suits by a reversioner against Hindu widow in possession, for a declaration and injunction, the court fees payable must be computed according to the valuation made in the plaint, *Kandhaiya Otha* v. *Musst. Jagrani Kuar*, 46 All 419; 79 I. C. 358.

Valuation.—The valuation should not be an arbitrary valuation, *Mohendra* v. *Dinabandhu*, 19 C. L. J. 15: 21 Ind. Cas 771; *Rajabala* v. *Radhika Charan*, 29 C. W. N. 76; 40 C. L. J. 150 (154) · 1924 A. I. R. (969) (C.); where it was held that value of the property involved is not necessarily the value for the purpose of ascertaining court fees.

A suit for declaration of title regarding a piece of land and for an injunction restraining the defendant from interfering with

the costruction of a chabutra was valued for the purpose of jurisdiction at Rs 1,100 for the land and at Rs 10 for the relief of injunction · held that under Section 7 IV (d) of the Court Fees Act read with Section 8 of the Suits Valuation Act, the plaintiff was bound to pay court fee *ad valorem* on Rs. 1,100 for injunction. *Bachhan* v. *The Municipal Board of Mirzapore*, 48 All 412 23 A L. J 478 94 I C. 951 1926 A I. R. 423 (All.).

Power of Court to Increase Valuation —A plaint was filed in a certain Court praying for an injunction, the relief sought being valued at Rs 50. On the objection of the defendant an issue was framed and the question was tried and it was held that the value was Rs 2,700 which exceeded the pecuniary jurisdiction of the Court. The plaint was accordingly returned for presentation to the proper Court *Held*, that the Court had no jurisdiction to increase the value of the suit Section 7, paragraph iv (d) of the Court Fees Act requires that, in a suit for an injunction, the plaintiff shall state the amount at which he values the relief sought, *Guruvasamma* v. *Venkata Krishnama Chetty*, 25 Mad 34, but see *Umatul Batul* v *Musst Nauji Koer*, 11 C. W N 705 6 C L J 427, *Balwant Rao* v. *Bhima Sankar*, 13 Bom 517

A suit for an injunction comes under Section 7 iv (d) of the Court Fees Act and the court fees payable are to be computed according to the amount at which the plaintiff values the relief sought, in the plaint, which value the plaintiff is entitled to fix himself In such a case it is wholly unnecessary for the plaintiff to fix any value for the purpose of jurisdiction as, by Section 8 of the Suits Valuation Act, the value for the purpose of court fees is also the value for the purpose of jurisdiction, *Govind Krishna Sathe* v *Hanmaya Lingaya Fulmani*, 59 Ind. Cas 777 See also *Shrimant Sunderbai* v. *Collector of Belgaum*, 43 Bom 376 23 C W N. 753 P. C.

Valuation of a Suit for a Permanent Injunction Restraining defendant from cutting timber in jungle and undergrowth and Accounts —The valuation of suit is the value of the relief sought in the plaint, and the plaint is to be stamped with court fee calculated *ad valorem* on that valuation, *Rai Charan Pandey* v. *Kunja Behary*, 46 Ind. Cas 884 , *Hari Sanker Dutt* v. *Kali Kumar Patra*, 32 Cal 734 9 C. W N. 690 ; *Gulab Singhji* v. *Lakshman Singhji*, 18 Bom 100.

Injunction Against user of Land.—Where the plaintiff alleging herself to be in possession along with others of the piece of land in suit sued the Municipality and the transferee from the Municipality, praying for a declaration of her right to use the same and for a further declaration that the Municip... is not entitled to use it in a manner detrimental to her ...

of user and for an injunction on the Municipality and the transferee prohibiting them to use the land in such a manner, *held* that the valuation for injunction can be a nominal amount permissible under the Suits Valuation Act and the court fee payable is *ad valorem* on such value plus Rs 10 for each of the two declarations, *Musst Mulkunnissa* v. *Municipal Committee, Delhi*, 118 P. L R. 1904.

The Real Valuation may be shown —"Notwithstanding the fact that, having regard to Section 7 of the Court Fees Act, (vii of 1870), sub-section 4, the value of this suit was fixed at Rs 1,500, I think, it is open to the petitioner, having regard to the nature of the relief sought, to show what was the real value of the property." *Hari Mohan Misser* v *Surendra Nath Singh*, 31 Cal 301 ; *Kumar Basanta K Ray* v *Secretary of State for India*, 14 C. W. N. 872, 6 Ind Cas 792.

PARAGRAPH (iv) e.—Easement.

In a case of conflicting claims with regard to the waters of a flowing stream, the claim by the plaintiff having been to have her lands irrigated in the way she claimed, the valuation according to Section 7 would be the extent of the declaration of her interest if that right could not be established, *Ajuaskooer* v *Mussi Luteefa*, 18 W. R. 21

In a suit to close a new door alleged to have been opened with a design to injuriously assert right over adjacent lands, the plaint need not be stamped as in a suit for the land itself, *Chundun* v *Taleb Ali*, 2 N. W. P 41.

PARAGRAPH (iv) f.—Account.

Valuation.—The Code of Civil Procedure (Act V of 1908) requires that the plaintiff should only approximately state the amount he claims. See Order 7, Rule 2 C. P. C (Act V of 1908)

The plaintiff is, therefore, free to fix any value but the execution of the decree he might obtain is controlled by Section 11 of the Court Fees Act. Section 11 precludes execution of the decree in case it exceeds such value until addtional court fee has been paid, *Govinda* v. *Dayabhai*, 9 Bom. 22.

In a suit for account the plaintiff is entitled to value it approximately but if the Court thinks that the suit has been under-valued it can at any time apply Section 54 C. P. C. (Or. 7, Rule 11) and reject the plaint, *Balwant Rao* v. *Bhima Sankar*, 13 Bom. 517. This valuation determines the jurisdiction of the Court and also the amount of court fees to be paid

on the plaint at the time of filing the suit, *Khushall Chand* v. *Nagin Das*, 12 Bom 675, *Sellamuthu Servagor* v *Ram Swami Pillai*, 12 M L. J. 66, *Hardayal* v *Ram Deo*, (1924) A. I R 354 (R)

But the plaintiff cannot afterwards amend the plaint by altering the valuation, specially if such alteration will affect the jurisdiction of Court, *Arogya* v *Appachi*, 25 Mad. 543 12 M L J 35, *Bai Imba* v *Pranjivandas*, 19 Bom 198; *Bhagabantrai* v *Mehta*, 16 Bom 40.

But if he places a low valuation and institutes the suit in a Court with a limited pecuniary jurisdiction, and if after enquiry, it is found that the plaintiff is entitled to a larger sum which was not in the jurisdiction of the Court to decree, the plaintiff is limited to the jurisdiction of that primary Court, *Golap Singh* v *Indra Coomar*, 13 C W N 493 9 C L J. 367 1 I C 86, *Bhupendra K Chakrabarti* v *Purna Ch Bose*, 43 Cal 650 13 C L J 132 15 C W N 504 8 I C. 31; *Harjibhai* v *Jamshedji*, (1913) 15 Bom. L R 1021

The reason for allowing the plaintiff to put an arbitrary value can be gathered from the fact that the plaintiff does not know how much is due to him, and as this can be definitely ascertained, only, after an enquiry See *Gulab Khan* v. *Abdul Wahab Khan*, 31 Cal 365, *Manna Lal* v *Samandu*, 46 P. R. 1906 94 P L R 1906 See also *Rishikesh* v. *Melaram*, 94 I C 650 1926 A I R 242 (Lahore)

Court Fees Payable—Under this paragraph the Court Fees are payable according to the value of the relief sought and not according to the value of the subject matter of the plaint, *Manohar Ganesh* v *Bawa Ram*, 2 Bom 219

Suits for Accounts.—A suit for injunction on the defendant to restrain him from cutting the trees of a forest, or in the alternative, for an order to keep an account of the trees removed, is a suit for accounts, *Gulab Singji* v *Lakshman Singhji*, 18 Bom 100

Suit for Partition of Offerings and Accounts.—The plaintiffs, who are *pujaris*, brought a suit for partition of offerings in the temple and to have the accouts explained to them and for inspection of the strong room, in which the offerings are stored. *Held*, that the suit is really one for accounts and *ad valorem* Court Fees are payable, *Kalka Ram* v *Ram Saran*, 13 P R. 1901 137 P L R 1901

Suit for Removal of Mohant and Accounts.—Where the plaintiffs brought a suit for removal of trustee, and for accounts, in case it be found that the trustee has embezzled any money of the idol, the suit does not come under this clause, as the money will be due to the idol and there will be no relief sought

by the plaintiff on this account, *Ramrup Das and others* v. *Mohunt Sitaram Das*, 14 C. W. N. 932 12 C. L. J. 211: 7 Ind Cas. 92; *Girdhari Lal* v. *Ram Lal*, 21 All. 200. See also under Art. 17, Clause 6 of second Schedule of this Act under "Charitable and Religious Trusts."

Appeal.—Valuation.—An appeal from a preliminary decree in a suit for rendering of accounts and winding up of partnership must bear *ad valorem* court fees on the amount of which the relief claimed is valued, *Dhurpati Srinivasacharlu* v *A Penndervamma*, 39 Mad. 725: 30 M. L. J 402. 33 I C. 604, *Kanji Mal* v. *Panna Lal*, 28 Ind Cas 262. But if during the pendency of appeal from the preliminary decree, the enquiry as to amount due is completed, and a smaller amount than the value of the appeal from preliminary decree, is found due, then no court fees are necessary in the appeal from the final decree, *Kanchan Mandar* v. *Kamala Prasad*, 16 C. L J 564 15 Ind Cas 572

Where the Account is for a limited Period.—And if the defence of the defendant be that he is liable to render accounts but only for a limited period owing to the operation of the Statue of Limitation, then the defendant appellant can put his own valuation on the memorandum of appeal and is not bound to accept the valuation by the plaintiff, *Kanhaiya* v. *Seth Ram Sarup*, 44 All 542 20 A. L J 416 66 Ind Cas. 841: (1923) All I. R. 228 (Allahabad). See also *Kuldip Sahay* v. *Harihar Prasad Jha*, I. L. R 3 Pat. 146 75 Ind Cas 871 (Patna) 1924 All I R. 161.

Administration Suit.—For decree in Administration Suit see Order 20, Rule 13 C. P. C.

Administration suit.—An administration suit is in essence a suit for accounts and application of the estate of the debtor for satisfaction of the dues of all the creditors.

An administration suit by a creditor is an action for an account within the meaning of Section 7 iv. (f) and the plaintiff is, therefore, entitled to put his own valuation on the relief claimed and that valuation would be valuation both for purposes of jurisdiction and for court fees. Court fees need not be paid on a higher valuation than the amount claimed by the plaintiff, *Sashi Bhusan Bose* v. *Maharaja Sir Manindra Chandra Nundy*, 24 C. L. J. 448· 21 C. W. N. 1310: 44 Cal. 890: 38 Ind. Cas. 835. See also *Ma Ma* v. *Ma Hmon*, 4 L. B. R. 279. See also *Chandramani* v. *Basdeo*, 4 Pat. L. J. 57: 49 I. C. 442.

In an administration suit valued at Rs. 30,000 for the purpose of jurisdiction and at Rs. 100 for the purpose of adjustment of accounts, wherein court fees were paid on the latter

sum only together with Rs. 10 for the approximate value of the claim for accounts apparently on the ground that the claim for administration was incapable of valuation. *Held*, that such a suit was in essence a suit for accounts, within the meaning of Section 7, Clause iv (f) of the Court Fees Act, and that the plaintiff is competent to value the claim for accounts approximately and to pay Court Fees thereon, *Saraju Bala Dasi* v. *Jogmaya Dasi*, 45 Cal 634 22 C W N 115 26 C L J. 265 41 Ind Cas 693 See also *Satya Kumar Bannerjee* v. *Satya Kripal Banerjee*, 10 C L J 503 3 Ind. Cas 247.

The claim in a suit for accounts of the estate of a deceased and for its administration by the Court was valued at Rs 130 for the purpose of Court Fees and at Rs 30,00,000 (thirty lakhs) for the purpose of jurisdiction *Held*, that having regard to the statements made in the plaint, the suit is an administration suit; and that it should be treated as a suit for accounts, the plaintiff being at liberty to value it at Rs 130 or any other sum under Section 7 iv (f) of the Court Fees Act, *Khatija* v *Sheikh Adam Husenally*, 30 Bom 545 17 Bom L R 574 29 Ind Cas 949.

Suit for declaration of title and administration and appointment of a Receiver —

Suit for a declaration of title after a true construction of the will of the testator and for declaration that the estate has been fully administered and that the executors are not entitled to remain in possession of the estate and for the appointment of a receiver, is a suit for declaration where a consequential relief, *viz*, administration of the estate and appointment of a receiver, has been prayed for and the High Court ordered *ad valorem* Court Fees to be paid in the High Court as well as the Courts below, *Rup Chand Ghosh* v *Srimati Khirodamayee Dasi and others*, (1917) 27 C. W. N 457 75 Ind Cas 567

Suit for administration and payment to the plaintiff of his share:

A suit for administration of the estate of a deceased person and *inter alia* payment to the plaintiff of his share, is a suit for administration and accounts within the meaning of Section 7 (iv) (f) of the Court Fees Act and Court Fees calculated *ad valorem* on the valuation by the plaintiff in the suit, are payable on the plaint The valuations for the purpose of jurisdiction and for Court Fees are the same, *Shujauddin* v *Ashaibi*, 100 P. R. 1914

When the amount due is found to be in excess.

If the amount decreed be in excess of the amount at which the relief was valued, the deficiency in Court Fees must be recovered as laid down in Section 11 of the Act, *San Paw* v. *Ma Yin*, 12 Bur. L. T. 207: 55 Ind. Cas. 258

Court Fees payable

The Court Fees on the plaint is to be determined with reference to the provisions of Section 7, iv (f) of the Court Fees Act, and the fee payable is to be calculated *ad valorem* upon the value of the relief sought as given in the plaint

A Judge, after having found in the initial stage of the case that, owing to plaintiff's inability to value the relief claimed, the plaint was insufficiently stamped with a ten Rupee Court Fee under Art. 17 (vi) of the second schedule of the Court Fees Act, can subsequently declare under Section 11, that there is a deficiency which is liable to be made good, *Prince Mirza Suraiya Qudr.* v *Nawab Qudsia Begum*, 24 Ind. Cas. 643.

Other Creditors.—"When, after the preliminary decree has been made, and creditors have been invited to establish their claims, if any, against the debtor, each creditor, who puts forward a claim not already transformed into a judgment debt, may well be required to pay Court Fees *ad valorem* on his application as if it were a plaint in a suit for the recovery of the sum he claims" *Sashi Bhusan* v *Maharaja Manindra Chandra* 44 Cal 890: 21 C W. N. 1310, 24 C L J 448. 38 I C. 835.

Suit by a Succeeding Administrator—A suit by a proceeding administrator to set aside a decree against the previous administrator and the sale in execution therefore is a suit for possession and the suit falls under Section 7 paragraph v of the Court Fees Act, *Bai Meherbai* v. *Maganchand*, 29 Bom. 96: 6 Bom. L. R. 853.

Partnership.—The application to wind up a partnership made under Section 265 of the Contract Act, is in the nature of a suit for an account, and should be stamped accordingly. *Abad Ali* v. *Jamiruddin*, 13 C. L R 160. See also *Bhogilal* v. *Potal Bhai*, 7 Bom. 125, *Erakshah* v *Adarji*, 7 Bom. 535.

Where some partners brought a suit for recovery of amounts due to them on the ground that the partnership was dissolved some years ago, the stamp duty payable on memorandum of appeal against the orders of the Lower Court, should be *ad valorem* fee as in a suit for accounts, *Ladubhai* v. *Revichand*, 6 Bom 143, *Dhani Ram* v. *Bhagirath*, 22 Cal. 692. *In the matter of Bholanath*, 7 All. L. J. 546; 32 All. 517: 6 Ind. Cas. 832.

Relief Sought.—Section 7 says that *ad valorem* Court Fees shall be paid "according to the amount at which the relief sought is valued in the plaint or memorandum of appeal." In all such suits "the plaintiff shall state the amount at which the relief sought" is valued. The proper meaning to be attached to the latter

words is that the plaintiff shall truly state the amount at which he values the relief sought, and that it cannot mean that a plaintiff is entitled to put in a fictitious value when the relief is capable of valuation That this is not a mere matter of form becomes apparent when one considers the fact that the valuation affects jurisdiction and decides the Court by which the case is to be tried. *Jogeshra* v. *Durga Prasad Singh*, 36 All. 500; 12 A L. J 844; 24 I C 679.

The valuation for purposes of Court fees is to be determined first and that for the purpose of jurisdiction must follow on the same, but the plaintiff in a suit in which a consequential relief is prayed cannot at one and the same time obtain the services of the highest possible tribunal for the determination of his claim and evade payment of *ad valorem* Court fees If for the purposes of jurisdiction he sets a high value on the relief by way of injunction, it is doing him no injustice to hold that "the relief sought" on which Court fees must be levied, *is the sum total of the two reliefs* *Mannu Lal* v *Radhey Gopalji*, 47 All 501; 23 A L J 344, 1925 A I R. 602 (All) See also *Balkrishna Narayan* v *Jankibai*, 44 Bom. 331; 22 Bom L. R 289, 57 I C 340, *Sailendra* v. *Ram Chandra*, 25 C W N 768, 34 C L J 94, 66 I C. 268

Order VII Rule 1 C. P C requires that a plaint shall contain a statement of the value of the subject-matter of suit for the purposes of jurisdiction It is not contemplated that the subject-matter shall have two values, one purely arbitrary and fanciful for the purposes of jurisdiction and one in strict conformity to the real value for the purposes of Court fees.

In either case the valuation should conform to reality. Therefore when a plaint contains a valuation for the purposes of jurisdiction, it is a natural assumption that the same valuation would apply, if it were necessary to have a valuation for an *ad valorem* Court fee.

A suit for an injunction and for the appointment of a receiver falls within the purview of Section 7 iv (c) of the Court Fees Act, and under Section 8 of the Suits Valuation Act, the value of such a suit for purposes of Court fees and jurisdiction must be the same.

Where in such a suit the plaint does not state the value put by the plaintiff upon the *relief sought*, and there is no valuation for the purpose of computing *ad valorem* Court fees, the value for the purposes of jurisdiction must also be taken to be the value for the purposes of Court fees *Pothi Annapurnayya* v *Pothi Nagaratnamma minor by next friend etc.*, 92 I. C. 730; 1926 A. I. R. 591 (Mad.).

PARAGRAPH V.

Note.—It must be noted that the Court Fee to be paid in suits or appeals falling under this paragraph is to be calculated on the value of the subject-matter as distinguished from the preceding paragraph where the Court Fees are to be paid according to the value of the relief sought, the valuation of the subject matter for the purposes of Court Fees being according to the method prescribed.

Valuation.

Religious Land.—The fact that the land is "religious land" does not make any difference and render it incapable of valuation with reference to the value of similar lands in the neighbourhood and the plaint is to be stamped according to the value of the subject-matter, *Maung Meik* v. *Kumara,* 60 Ind. Cas. 5: (1920) 3 U. B R. 236.

Application.—The effect of clauses (a) to (d) of this paragraph is confined to the land in respect of which revenue might have been paid but not as regards leasehold lands. *Ram Ekbal* v. *Baldeo Singh,* 19 C L J 418 25 Ind Cas 507; *Bibi Kulsum* v *Muhammad Hamid,* 45 Ind Cas. 928 (Patna); *Dhakeswar* v *Jiva Chowdhury,* 3 Pat L J 448. But see *Habibul Hossein* v. *Mahomed Reja,* 8 Cal. 892 10 C L. R. 385.

Land.—The word "land" as used in the Court Fees Act, does not include buildings. *Durga Singh* v *Bisheswar Dayal,* 24 All 218 28 All W N 27, *Dayachand* v *Hemchand,* 4 Bom 515

Declaration and Possession.—See under *"declaration and possession"* at page...... *supra* and also under *"possession" infra*

"The Court is in all cases bound to adjudicate upon the matters in issue between the parties and it is necessary for the plaintiff to pray that this should be done. The real relief which the plaintiff seeks is the delivery of possession of the property by dispossession of the defendant, and if he asks for a decree in those terms when he is not bound first to ask for a declaration before such relief can be granted, I do not think that, merely because he asks the Court to adjudicate upon the matters in issue, the suit should be treated as a suit to obtain a declaratory decree with consequential relief." *Ramsumran Prasad* v. *Govind Das,* 2 Pat. 125; 1922 Pat. C. W. N. 291; 3 P. L. T. 704: 1 Pat. L. R. 1: 68 I. C. 700: 1922 A. I. R. 615 (Pat.) F. B.

Suit by a Succeeding Administrator.—A decree on award having been passed against an administrator at the instance of the creditor of the estate represented by the administrator, the

decree holder in execution of the decree put up a property to sale and purchased it himself with the sanction of the Court. A succeeding administrator brought a suit to set aside the decree and the sale in execution thereof on the ground that under Section 282 of the Succession Act (Act X of the 1865), the decree-holder was only entitled to a rateable distribution among the creditors of the estate, held, that the case fell under Section 7 paragraph v of the Court Fees Act, *Bai Meherbai v Maganchand*, 29 Bom 96 6 Bom L R 853

Ejectment Suit.

Ghatwali Lands—Suits for recovery of possession of *Ghatwali* lands come under Clause (d) of this paragraph, as these are not recorded in the Collector's Register as Revenue paying estates, even if these be regarded as revenue paying estates, and the valuation is the market value of the property in dispute, *Chandra Narayan Singh v Ashutosh Deo*, 41 Cal. 612 19 C L J 342, 18 C W. N 659 · 23 Ind Cas. 89

Raiyat at Fixed Rates—A suit to eject a tenant at fixed rates is a suit for possession within this paragraph and the valuation for the purposes of jurisdiction and court fees is the value of the subject matter of suit, *i e*, the tenant-right and not of the land itself nor one year's rent, *Ram Raj Tewari v Girnandan*, 15 All 63 (1892) 12 All W N 240

When a landlord claims to eject a tenant, he claims to recover the tenant-right in the holding, and the stamp duty chargeable on the plaint, should be determined with reference to the market-value of that right, *Ajodhya v Daibee*, 3 Agra 5 But see *Kebul Ram Mundul v W S Wells*, 24 W R 454, where it was held that the stamp is to be paid on the valuation by the plaintiff

Where ejectment is asked for breach of the covenant, and the title of the plaintiff, as appearing from the plaint, is complete, the Court Fee payable is as in a suit for possession under section 7 (v) to be ascertained by reference to sub-clause (e) of the same clause *Mahomed Ibrahim Shahib Khatun v Bhymeah A Imailyi*, 1 L. B. R 303 But see Section 7, xi (cc) for cases of ejectment of tenants by landlords and of tenants holding over after expiry of the period of written lease, and the cases noted there.

Value of Improvements—Where the tenant-right was valued at Rs 50 and the tenant claimed Rs 500 as value of the improvements which claim was disallowed, *held* in an appeal by the tenant for compensation only, the memorandum is to be stamped as in a suit for possession of land, and that the claim for improvements was not the subject matter of suit but merely incidental to the proceedings, *Reference Under Court Fees Act*, 23 Mad. 84.

Suit for Possession by Mortgagee.—A suit for possession by a mortgagee by conditional sale, claiming to have foreclosed the mortgage under Regulation xcii of 1806, is a suit for possession, *Tellu Mal* v. *Lal Singh*, 20 P. R 1893.

Section 7 v (d) applies to a suit by the usufructuary-mortgagee to recover possession of the property, and the property is to be valued at the market value, which means in such cases the mortgagee's interest in the property, *i.e.*, the amount of mortgage-money, *Mahdi* v. *Gajadhar*, 73 Ind. Cas. 244 ; (Oudh) 1924 A I. R 163

Redemption and possession—Where the suit is one for possession but the Court allowed redemption on payment of a certain sum due as mortgage money, the nature of the suit is not thereby changed *Purna Singh* v *Kesar Singh*, 39 P. R. 1907 119 P. L. R 1907 , but when the mortgagor asks for possession in a suit for concellation of the mortgage deed and possession, the suit comes under Section 7 paragraph ix. of the Court Fees Act *Karaman Singh* v *Norman Cockell*, 1 C. W. N 670.

Valuation—Valuation for jurisdiction in a suit for possession after a decree for foreclosure in a mortgage by conditional sale is not to be calculated under the Court Fees Act. *Ahalyabai Debya* v *Shama Charan Bose*, 1 C. L. R. 473.

Suit for partition and separate possession.—Suit for partition and separate possession of joint family property comes under this paragraph according to Bombay High Court. It is the market value of the land and houses that determines jurisdiction, *Dagdu* v *Totaram*, 11 Bom. L. R 1074 · 33 Bom. 658.

Specific performance and possession—The plaint in a suit for specific performance of contract and possession should be stamped under Section 7 paragraph v. according to the value of the subject-matter, *Madan Mohan Singh* v. *Gaja Prasad Singh*, 14 C. L. J. 159 : 11 Ind. Cas 228.

The plaintiff sued for recovery of possession of a mine, for mesne profits and damages alleging that she is a transferee from the grantee from the mother of the 1st defendant, who has since then entered into an agreement with other persons, whom he had authorised to enter upon the land, to grant them a lease. The plaintiff was unable to obtain possession of the property claimed by her, and her suit was in substance a suit for possession. Held that the suit fell under Section 7 paragraph v. and not under Section 7, paragraph xi (e) or under Section 7, iv. (c) of this Act, *Sundar Lal Marwari* v. *Jessie Caroline Murray*, 16 C. L. J. 375 : 16 Ind Cas 963.

Where the plaintiff alleged that the defendant agreed to

sell certain land to him and had received part of the consideration money and the present suit is one for possession of the land and also that the defendant may be ordered to execute a sale deed and have it registered on receipt of the balance of the consideration. *Held,* that the suit is one for possession and other prayers are ancillary to that prayer and the court fee is payable under Section 7 paragraph v. of the Court Fees Act, *Gopal Das* v *Parmanand,* 60 Ind Cas. 512; *Nihal Singh* v. *Seva Ram,* 38 All. 292 14 All. L. J 434: 55 Ind Cas 275: *Nathe Khan* v. *Muhammad Khan,* 128 P. W R 1918 · 46 Ind Cas 534. See also cases noted under *"specific performance and possession" infra.*

Milkiat and Khudkast —A claim for possession of Milkiat does not include a claim for possession of the Khudkast. The test is "would the plaintiff be entitled to the direct possession of Khudkast lands in a suit for possession of Milkiat share? . If the claim for possession of Milkiat shares included the claim for the possession of Khudkast lands then clearly there was no necessity for asking for any relief in respect of the Khudkast land" The result is that where the claim for khudkast land is not included in the claim for Milkiat shares then the claim as to khudkast lands should be separately valued and *ad valorem* court fees paid on that valuation *Raghubans Narayan Singh* v *Khub Lal Singh,* 80 I C 439

Suit by a Lessee —Where the lessee sues for possession of land comprised in the lease but of which possession is not given, the suit is not a suit for specific performance of contract but is governed by Section 7, paragraph v of the Court Fees Act, *Ghulam Sabir* v *Narain Prasad,* (1908), 28 All W N. 201 5 All. L J. 534

Clause (a).

Application —A plaintiff cannot avail himself of Clause (a) of paragraph v of Section 7 of the Court Fees Act unless he brings his case strictly within its terms, and for that purpose the determining factor is the land in suit and not a larger property in which it may be included The lands must further be recorded in the Collector's register as separately assessed with revenue, within the meaning of Clause (a) of para (v) of Section 7, *Chandra Narayan Singh* v *Ashutosh Deo,* 41 Cal. 812 18 C W. N 659. 19 C. L. J 342: 23 Ind. Cas. 89.

Bagayat Land —Paying revenue to Government should be valued, for the purposes of Court Fees under Clause (a) and not under Clause (e) of this paragraph, *Raghu* v. *Tellapa,* 1884 P J. 50.

Definite Share of an Estate.—A definite share does not mean a definite share separately assessed with Revenue.

In a suit to recover possession of a definite share in a permanently settled Revenue paying estate, the plaint is to be stamped with court fees calculated according to the first part of this clause, *Buniad Lal* v. *Shyam Lal*, 12 C. W. N. 990.

Definite Share in a Subordinate Tenure.—The plaint in a suit by a *subordinate tenureholder* to recover possession of a definite share in a permanently settled area, should be stamped according to Clause (a) of paragraph v of Section 7, *Habibul Hossein* v *Mahomed Reza*, 8 Cal 892 10 C L. R. 385.

A share in an under-proprietory-tenure in a permanently settled village, is a definite share of the estate as a whole and the court fee payable in a suit for possession of such share is to be calculated on ten times the revenue payable on the share in suit The Judical Commissioner said "who pays the Revenue to Government is immaterial for the purpose of determining the court fees payable on such a claim . . . ." "the 5 annas 4 pies share of the subject-matter (the undertenure) is certainly a definite share of the estate as a whole which pays annual revenue to Government, and as such revenue is permanently settled, it follows that the amount of the court fees payable by the plaintiff in this suit must be calculated with reference to ten times the revenue payable," *Swaminath* v. *Jang Bahadur Sing*, 24 O. C 39, 58 Ind Cas 132, 133. See *contra Bibi Kulsum* v *Muhammad Hamid*, 45 Ind. Cas. 928, (Patna)

Clause (b).

Fractional share—When a part of an estate paying annual revenue to Government under a settlement which is not permanent is recorded in the Collector's register as separately assessed with such revenue, the value of the subject matter of a suit for the possession, or to enforce a right of preemption in respect of a fractional share of that part, shall, for the purpose of computation of the amount of court fee payable in the suit, be deemed not to exceed five times the revenue separately assessed on that part as may be rateably payable in respect of the same, *Government of India Notification*, No. 1746, dated 4th April, 1889.

The conversion of an assessed arable land into a cocoanut tope does not make Section 7 (v) (a) inapplicable and the trees standing thereon should not be separately valued, *Kullappa Gounden* v. *Abdul Rahim Shahib*, 5 L. W. 270: 21 M. L. J. 251: 39 Ind. Cas. 254. Growing cocoanuts on a rice field must be taken to be an election by the tenant to raise that particular kind of crop, *Venkayya* v. *Ramasami*, 22 Mad. 39: 8 M. L. J. 278; *Murugesa Chetti* v. *Chinna Thambi Goundan*, 24 Mad. 421.

A suit for possession of land assessed to revenue by setting aside the sale in favour of the defendant, falls under Section 7 v. (b) of the Court Fees Act, *Sarju and another* v *Sheoraj*, 94 I. C 179; 1926 A I R 380 (Oudh)

Definite share of an estate.—In a *Bhaiya chera* village the plaintiff sued to pre-empt certain plots of land measuring half a kata paying revenue to Government *Held*, that the property sold was a definite share of an estate paying revenue to Government and the Court Fee payable was under Section 7 (v) (b) of the Court Fees Act, *Zahana* v *Gopal*, 3 A L J 511 (1906) 26 A W N 195

In a suit for possession of a *Khata* jointly with the defendant, the entire *khata* being part of revenue paying estate and recorded in the Collector's Register as separately assessed with revenue, the value of the suit must be deemed to be five times the revenue payable on the *khata*, *Ganda Mal* v *Musst Mahato*, 1878 P R 67.

In a suit for declaration of right to land and possession of definite shares of estates paying an annual revenue to Government but not permanently, the plaint is to be stamped with a Court Fee calculated on five times the revenue payable in respect of the shares, *Ishri Dial* v *Kishen Das*, 1 A W N 5

Application

As to mokarari lease of a definite share, this sub-section does not apply, *Bibi Kulsum* v *Muhammad Hamid*, 45 I C 928 (Patna)

Where entire field plots are separately assessed to revenue then Section 7, v (b) applies, *Ma Shin* v *Maung Hmnan and others*, 1924 All I R 102 (R)

Reversioners.—A suit by Hindu reversioners, asking that a sale deed be declared null and void as against them and that possession of the property be given to them, is an ordinary suit for possession of property and the Court Fee payable thereon, is to be calculated *ad valorem* on five times the Government Revenue, as it is not necessary for the plaintiffs to ask for any declaration, *Tika Ram* v *Salig Ram*, 18 A L J. 90 ; 57 Ind. Cas 494 ; but see *Chandan* v *Bishun Singh*, 8 A. L J 798

Inam Lands.—Where *inam* lands were for a long time treated as ryotwari land but after the institution of the suit by the plaintiffs for possession, were *recorded* as *inam* lands *Held* that the valuation is to be on the basis that the lands are ryotwari lands at five times the revenue payable under Section 7

(v) (b) of the Court Fees Act, *Narayani Mandal* v. *Secretary of State*, 41 Ind. Cas. 167.

Clause (c).

Application.

Before a party can rely upon Clause (c) of paragraph v of Section 7 of the Court Fees Act, he must establish that the land in suit pays no revenue, permanently or temporarily settled thereon, or has been partially exempted from such payment or is charged with a fixed payment in lieu of such revenue, *Chandra Narayan Singh* v. *Ashutosh Deo*, 41 Cal. 812: 18 C W. N 659: 19 C L J 342: 23 Ind. Cas 89.

Paramba in Malabar —"In Malabar the assessment is levid upon the cocoanut, areca or jack trees which grow in parambas. If a paramba contains no cocoanut, areca or jack trees, no assessment is charged In fact in Malabar a tree tax is substituted for the land assessment, and whether or not a paramba is assessed depends upon the nature of the trees grown therein. It is, therefore, evident that parambas should either be classed as lands paying no revenue or as gardens . . . . We are of opinion that the term refers primarily to garden in English sense, ornamental or pleasure or vegetable, and that parambas do not ordinarily come under that category. . . . . The Acting District Judge will be informed that in case of parambas the amount of fees payable under Act VII of 1870, is to be computed either under Sub-Section (c) or (e) of Section 7, Clause (v) according to the circumstances of each case." *Auda-thodan Moidin* v. *Pullambath Mamally*, 12 Mad. 301

Land Subject to Fluctuating Assessment.—In a suit for possession of land subject to a fluctuating assessment, the court fee payable is governed, not by Clause (b) or Clause (d) but by the Clause (c) of Section 7, paragraph v of the Court Fees Act, *Mahna Singh* v. *Bahadur Singh*, 100 P. R. 1919: 50 Ind Cas 124.

"Such Revenue."—The words *"such revenue"* mean "annual revenue payable to Government "—*Ibid.*

When the plaintiff sued for possession of colony land and stamped the plaint with a court fee calculated on five times the revenue it was held that Court Fees should be paid on the market value of the land and valuation for the purpose of jurisdiction should be at the same figure, *Wasawa Ram* v. *Bahadur Chand*, 194 P. L. R. 1914: 25 I C 24.

The year next before the date of presenting the plaint.—Means a period of 365 days reckoned backwards from the date

of presentation of the plaint, *Ghasi Ram* v *Har Govinda*, 28 All. 411 : 3 A. L J 244 26 A W N 66.

Clause (d). Not a definite share of an estate.

In a suit to recover possession of specific plots of land not constituting a definite share of a distinct revenue-paying area and not being separately assessed with revenue, the Court Fees should be assessed on the market value of the land in suit, *Godavarthi Mangamma* v *Gadavarthi Sundaramma*, 10 M L. T. 266: (1016) M W N 325 33 Ind Cas 683

A suit by a ryot against another ryot for possession of a plot of land forming part of a Zemindary estate is governed by sub-clause (d) of Clause (v) of Section 7 of the Court Fees Act Where a Court finds that a suit valued under Clause (a) falls under Clause (d) of paragraph v of Sec 7 of the Court Fees Act, it should call upon the plaintiff to state what the market value of the land is and after determining the market value should order the plaintiff to pay the proper Court Fees and fix the time for payment and in case of failing to pay to reject the plaint, *Kandoswamy* v *Subbai*, 77 Ind Cas 781 46 M. L. J. 345:

Reversioners —When the reversioners sued for specific plots of land totalling 11 bighas and 11 biswas of land out of 17 bighas of land assessed with a revenue of Rs 19-7-0 but did not sue as ⅔rd share of the said 17 bighas, *held* that court fee should be paid on the market value of the land and not on 5 (five) times the revenue payable, *Chandan* v *Bishun Singh*, 8 A L. J 798

Where the subject-matter is not a definite share, the court fees must be calculated under Section 7 (v) (d), *Musst. Jian* v. *Musst. Nadir Nishan*, 6 P. R (1883)

For Court Fees payable, see Government Notification, dated 10th September 1889, No 4650, Clause 18 in the Appendix

The *principle* seems to be that if the suit be not for a definit share, say a fourth or a fifth share, of a separately assessed estate, *then the court fees payable is to be calculated* on 5 times the revenue assessed on that share, but if the suit be for distinct plots and not a definite share then the court fee is to be paid on the market value of the share, *Reference under the Court Fees Act*, 1870, Section 5, 16 All 493 14 A W N. 174.

Where the subject-matter of suit consists of individual field plots forming a part of the holding but not separately assessed nor an entire holding or a definite share of a holding, the Court Fees are to be assessed under Section 7, v (d) and not under Section 7, v (b) of the Court Fees Act, *Ma Sha Ma* v. *L. S. M. Somasundaram Chetti*, 75 Ind. Cas 217: 1923 A. I. R. 246

(Ran.) ; *Ma Shin* v. *Maung Hanm*, 79 I. C. 579: 1924 All. I. R. 102 (R).

Ghatwali Lands —In a suit for recovery of possession of five Ghatwali Mahals where the property in suit consisted of five Ghatwali Mahals, and was included in an aggregate of 52 Ghatwali Mahals for which a sum of Rs 16,183 was payable annually as *sudder jama*, no apportionment of this sum was made with reference to the several tenures It appeared from the Collector's Register that a sum of Rs. 22,494 was collected by Government from 52 Ghatwali Mahals out of which the Government retained a sum of Rs 16,183 on account of *sudder jama* and paid the balance to the zemindar within whose estate the Ghatwali land was originally comprised. The collections from the five Ghatwali Mahals in suit amounted to Rs 3,748-12-8. *Held*, that Clause (d) in paragraph v of Section 7 of the Court Fees Act was applicable and the value of the subject matter was the market value That the sum of Rs 3,148-12-8 was not the revenue payable in respect of those five Ghatwali Mahals That even if the disputed land was deemed as part of revenue paying estate, it was not recorded in the Collector's Register as separately assessed with revenue within the meaning of Clauses (a) of paragraph v of Section 7 of the Court Fees Act, *Chandra Narayan Singh* v *Ashutosh Deo*, 41 Cal 812 · 18 C. W. N. 659 19 C L J. 342 23 Ind Cas 89

The court fee payable in respect of a suit for recovery of land forming part of an entire area, but neither sub-divided nor separately assessed to land revenue, must be computed on the market value of the land sued for under Section 7 (v) (d) of the Court Fees Act, *Godavarthy Sundaramma* v *Godavarthy Mangamma*, 34 M L. J 538. 47 Ind Cas 543 8 L. W. 88

Market Value.—The expression "*market value*" in Section 7, v (d) means market value of the subject matter in dispute. The "market value" of a suit for possession by a usufructuary mortgage is the mortgage money *Madhu* v. *Gajadhar*, 73 Ind. Cas 244.

See also *Raja Gopala Naidu* v. *Ramsubramania Aiyar*, 46 Mad 782 , 45 M. L. J. 274 ; 1923 M. W. N 550 ; 74 Ind Cas. 198 , 18 L W. 326 ; 1924 A I. R 19 (Madras) F. B.

Proviso 1.—The three clauses of the proviso seem to apply only to land which have been subjected to a survey settlement as ordinarily understood and legally provided for in the Bombay Presidency ; the first clause being applicable to lands settled for a period not exceeding thirty years, the second to lands settled for a longer period or permanently, and the third to *inam* (alienated) lands on which the whole or a part of the survey

assessment has been expressly remitted, per *Birdwood* J. in *Alachela* v *Oghadbhai Thakersi*, 11 Bom 451, (549 (F. B.)

Khoti estate is an estate paying revenue to Government upon which an assessment is temporarily settled, and a suit for its recovery should be assessed at eight times the annual assessment under Act XXVI of 187 Schedule B, Art II, Note (a), Special Rule 1, for the Bombay Presidency, *Ex parte Vithal*, 4 Bom H C. A C 148.

Proviso 3.—Proviso 3 to paragraph v of section 7 has reference only to the rate of remission at the date of suit It has no reference to remissions previously made, but no longer existing, *Balavant Ram Chandra* v *Secretary of State*, (1905) 29 Bom 480 7 Bom L. R 497.

The proprietor of a talukdari village who had, under a settlement from Government for a period of twenty-two years, agreed to pay an annual jama of graduated assessment instead of full survey assessment of the whole village, sued for possession of 353 acres and 2 grantees of land and claimed Rs 2,100 as mesne profits and obtained a decree, against this the defendant appealed to the High Court valuing his claim at Rs 151-0-9 for the portion of land decreed. On the report of the Taxing Officer, held by the majority of the Full Bench, that the difference in amount between the jama and the full survey assessment was a remission, and therefore a suit for possession of lands in this village was to be valued according to clause 3 of the proviso to Article v of section 7 of the Court Fees Act (vii of 1870), *Alachela* v. *Oghadbhai Thakersi*, F B 11 Bom. 451 (548)

The remission contemplated by clause 3 of the proviso is an express remission, and not a mere difference in amount between actual assessment payable by talukdar and the survey assessment, *Bavaji Mohanji* v. *Pemjabhai Hambhai*, 1881 P. J 177 reported also 11 Bom at oage 550 (notes).

Clause (e).—*Suit for the possession of a house.*—*Ad valorem* Court Fee should be levied on the value of the house and not on its rent In *the Goods of Ram Chandra Das*, 9 B L R 30 18 W R 153. In a suit for possession the valuation would be the market value of the house, *Parsick* v. *Parsick*, 72 P. R 1899 See also *Abdur Rahman* v *Charagdin*, 19 P. R. 1908: 129 P L R 1908. 38 P. W. R. 1908 F. B See also under paragraph xi (cc) of Section 7; *Sundar Das* v. *Musst. Umda Jan*, 82 I C 614; 1924 A. I. R. 1 (Lahore)

The plaintiff brought a suit on the ground that the defendants are licensee-tenants-at-will of the house they are residing in but the house really belongs to her and she had served a notice on them to quit but they have set up an oral gift by

her to them and refuses to vacate the house ; that they may be ordered to vacate the house and garden in suit. The trial held that the suit is a suit for declaration with a consequential relief and that *ad valorem* Court Fee is payable on the value of the house and garden which it found to be in excess of the valuation made by the plaintiff and returned the plaint The lower appellate Court affirmed this decision on appeal. The High Court in revision held that the suit as framed is a suit for ejectment The prayer for determination of plaintiff's title was only incidentally made in the plaint The Court Fee is payable in accordance with the market value of the subject matter of the suit. The subject matter is the right to eject the defendants and the value of that right is the value at which the defendant's right to remain in the house under license is valued *Musst. Barkatunnissa* v. *Musst Kaniz Fatima*, I L. R. 5 Patna 631.

Indigo Factory.—In suits to recover indigo factory Court Fees are payable on the market value of the buildings and not according to the value of the site, *Durga Singh* v. *Bisheshar Dayal*, 24 All. 218 22 A. W N 27

In a suit for recovery of certain land after removing the building, illegally erected thereon, by the defendant, the value of the land alone will be taken into account and not the value of the building, *Ramaswami* v *Gundappa*, 7 M. L. J. 49. See also *Muthu Namasivayalla* v *Subramania*, 24 M. L. J. 37.

But if there be permanent structures which are not sought to be demolished then the value of the house must be taken into account, *Nihalchand* v *Uday Ram*, 1886 A W. N. 106.

Garden.—Suit for possession of a garden by a tenant on declaration of his occupancy right, See *Upendra Chandra Mitra* v. *Satcouri Dhar*, 23 Ind Cas. 964, *supra*

A garden primarily means an ornamental or pleasure or vegetable garden, yet it is a question of fact which must be decided in each case, *Audathodan Moidin* v. *Pullambath Mamally*, 12 Mad. 301.

A few isolated trees on a piece of land will not make it a garden, but where a number of trees are planted on a particular piece of land which is well defined and can be marked off from the rest of the land, it is difficult to see why the particular plot should not be treated as a garden, if the land is used for cultivation of flowers, fruits or vegetables. In suits in respect of land on which cocoanut trees have been planted, the question whether it is a garden or not and whether for the purpose of determination of jurisdiction it fell under paragraph v (c) or v (e) is a question of fact to be determined on the evidence in each case. Whether the land is assessed or unassessed it will fall under paragraph v (c) if it is a garden, *Abdul Rahim Shahib* v.

Kullappa Gounden, 18 M L T. 243 reversed on appeal in *Kullappa Gounden* v *Abdul Rahim Shahib*, 40 Mad 824 · 5 L W 270 · 21 M. L T 251 39 Ind Cas. 254, where it was held that a garden means an ornamental or pleasure or vegetable garden and the fact that cocoanut trees were planted does not make it a garden

In a suit for land though assessed with land revenue forming a garden and two houses, the valuation for the purposes of Court Fees is governed by Section 7, paragraph v (c) of the Court Fees Act and is not to be arrived at either for the purpose of Court Fees or for jurisdiction by the artificial 30 times jama rule, *Musst Bhap Bhari* v. *Jowahir Singh*, 25 Ind Cas. 545. 71 P R 1914 241 P. L R 1914 155 P. W R. 1914

A fruit garden would be a "garden" even though the land is assessed with revenue, *Siri Dhar* v *Amar Nath*, 34 P W R. 1908 61 P L R 1908: 146 P R 1908

PARAGRAPH VI.

The valuation is to be computed in accordance with paragraph v of this section, *Sunder Singh* v *Dhian Singh*, 15 P R 1919

Valuation for the Purpose of Jurisdiction.—In a pre-emption suit, the subject matter is the right of pre-emption, the value of which, and not that of the property itself, determines the question of jurisdiction under Section 20 Act VI of 1871 (Bengal Civil Courts Act), *Nanu Singh* v *Rash Behari Singh*, 13 Cal. 255.

The valuation of a suit for pre-emption of land of the description falling under Section 7, v (d) of the Court Fees Act, the valuation for Court Fees and jurisdiction is to be determined with reference to the market value of the land at the date of sale and not at the date of institution of suit. (The cases of *Sundar Das* v *Sham Singh*, 74 P R 1875, *Fazl* v. *Godar Khan*, 161 P R. 1883 dist on the ground that in those cases the claim for value of improvement had to be considered and the pre-emptor had to pay the value of the improvements in addition to the value of the property sold at the time of sale), *Sher Muhammad* v *Ahmad Said and others*, 69 Ind Cas. 650: (1924) A. I R 380 (Lahore)

Valuation for the Purpose of Court Fee.—"The bill, as first amended, imposed a fixed charge of Rs 10 on suits relating to rights of pre-emption. The effect of that provision would be to reverse the existing practice, under which such suits were assessed according to the value of the property regarding which a right of pre-emption was claimed Further consideration of the matter had led to the conclusion that this practice was in

accordance with the principle adopted throughout the Bill ; that the valuation of suits should be regulated by the value of the subject matter actually in dispute, and should therefore be maintained. In the cases referred to, the subject matter was in fact the possession of the property which the litigants claimed a right to purchase, and the application of the abovementioned principle to such cases was in no way barred or affected by the circumstances that one or other of the disputing parties had to pay a certain amount to a third person as a preliminary condition to obtaining the actual possession of the property to which the suit has reference." *Gazette of India, Supplement*, dated 12th March, 1870.

In a suit for pre-emption in respect of separate plots of land, which did not constitute any definite portion of a distinct revenue-paying area, and were not themselves separately assessed with revenue, the Court Fee should be paid on the market value of the land in suit and not as the case where the suit is for a definite fractional share, on five times the Government revenue See Government of India Notification, dated 10th September, 1889 No. 4650, Clause 18 in the Appendix.

Pre-emption in respect of a Revenue Paying Estate.—For the purpose of Court Fees a suit for pre-emption in respect of a sale of land paying revenue to Government falls under Section 7 (v) of the Court Fees Act, *Sunder Singh* v. *Dhian Singh*, 15 P R 1919 43 P L R 1919 49 Ind. Cas. 358.

The principle seems to be that when the suit is for a definite share, say a 1/4th or 1/5th of a separately assessed revenue paying estate, the Court Fee may be paid on five times the revenue assessed on that part, but if the suit be for district plots and not for a fractional part then the Court Fee must be paid on the market value, *Reference under the Court Fees Act, 1870*: 16 All. 493 14 A. W. N 174 Whether the plaintiff sued for pre-emption of shares of two villages out of a larger number sold in one and the same transaction, the plaint is properly stamped if the Court Fees paid are calculated on five times the aggregate amount of the Government revenue payable for each of the two villages, *Durga Prosad* v. *Purandar Singh*, 27 All. 186 24 All W N 210. See also the cases of *Chamaili Rani* v. *Ram Dei*, 1 All. 552 ; *Mulchand* v *Shib Charan Lal*, 2 All 676 , *Sukru* v *Tufazzul Hossein Khan*, 16 All 401. In a suit for pre-emption, the Court Fees are to be calculated on the market value of land under paragraph v (d) of Section 7 unless the suit be for a definite share of an estate paying revenue to Government or is recorded in the Collector's Register as separately assessed, *Musst. Jian* v. *Musst. Nadir Nishan*, 6 P. R 1883. There is no provision in the Court Fees Act for the valuation of the fractional part of a holding which is recorded

in the Collector's Register as separately assessed with land revenue, *Haidar Ali* v. *Sandha*, 102 P. R. 1880 And in a suit for pre-emption in respect of separate plots of land which is not a definite share of the revenue paying estate and were not in themselves separately assessed with revenue, the Court Fee should be assessed on the market value of the property, *Baiju* v. *Mir*, (1894) 14 A W. N. 174

It is the duty of the *Munsarim* to see that where pre-emption of certain land out of a larger one is sought, that the plot in dispute is a definite share of the whole as recorded in the Collector's Register or itself is separately assessed with Revenue as under Section 7 (v) (b), *Hasibutnissa* v. *Ghafurullah Khan*, 29 All. 382 (1907) 27 A. W N 110 4 A L J 363.

Garden.—In a suit to pre-empt a garden with a house and out-houses, the High Court held that the term "garden" includes a fruit garden though the land might have been assessed to land revenue, and that the value of a suit for possession of such a garden for the purposes of the Court Fees Act must be assessed at the market value of the garden, *Behari Lal* v *Nand Lal*, 68 Ind Cas 345 2 L L J 302, *approving Must Bhagbhari* v *Jawahir Singh*, 71 P. R 1914 25 Ind. Cas. 545

Mortgage.—This paragraph applies even if the land is subject to a usufructuary mortgage, and immediate possession cannot be obtained or is not sought, *Daryao Singh* v *Bharat Singh*, 32 All 19 F B 6 A L J 905 3 Ind Cas 562

Transfer of equity of redemption —In a suit for pre-emption on the transfer of equity of redemption of a house, the Court Fee to be paid is to be calculated on the market value of the house which is the subject matter of the mortgage, *Ghasita Mal* v. *Kanshi Ram*, 123 P L R 1903.

Indigo Factory.—A claim, therefore, for pre-emption of an indigo factory, although the site of the factory may be land paying revenue to Government, must be valued, and the Court Fees paid thereon according to the value of the buildings constituting the factory and not according to the value of the site. Such buildings as constitute the factory would fall within the meaning of the term "houses" as used in the Court Fees Act, *Durga Singh* v *Bisheshar Dayal*, 24 All 218 · 22 A W N 27

Valuation.—The valuation of a suit to enforce a right to pre-empt is, in accordance with section 14 of the Madras Civil Courts Act, that fixed in the manner provided by Sec 7 (v) of the Court Fees Act, *Narayan Nair* v. *Cheria Katiri Kutty*, 34 M L J 397 · 45 Ind. Cas. 89.

In case of deficiency. Court to give time.—In a pre-emption suit when the plaint is insufficiently stamped the Court must give time to make good deficiency under Order 7 Rule 11

C. P. C., *Jiwan Das* v *Khusabi Ram*, 27 P. L. R. 1917: 25 P. W. R. 1917: 39 Ind Cas 766.

As to Appeals.—See *Hafiz Ahmad* v. *Sabha Ram*, 6 All. 480: 3 All. W. N. 179—where the defendants appealed on the ground that they are entitled to a larger amount and that the defendants have estopped themselves by refusing to purchase the same the High Court, at page 490 of the report, said, "We do not agree that the nature of suit has changed in appeal, on the contrary, the subject matter of the dispute between the parties was the right of pre-emption, the value of which was to be determined in the manner directed by Section 7, paragraph vi of the Court Fees Act . We are of opinion that where an appeal is preferred in a suit for pre-emption, on the ground that the right to pre-empt has or has not been established, as the case may be, no matter what other pleas may be taken, the value of the subject matter in dispute, for the purposes of the Court Fees Act, must be determined as in terms provided in paragraph vi of Section 7 of the Act. But when the question in appeal relates solely to the amount to be paid by the pre-emptor, then we thing that it should be calculated *ad valorem* on the difference between the amounts alleged as sale price on the one side and the other "

PARAGRAPH VIII.

The plaintiff sued to remove an attachment placed by the Collector of Thana on a cocoanut garden in Salsette in order to levy a fine of Rs. 2,340. The Bombay High Court said at page 357. "The word "value" in the last clause must be construed in the same way as in the previous clauses of the same section, and therefore, in case of land held on assessment for a period not exceeding thirty years, and paying the full assessment to Government (which is the present case), the value must be deemed to be sum equal to five times the survey assessment The meaning of clause viii evidently is that a person suing to set aside an attachment on land shall in no case be called upon to pay a higher fee than he would have to pay if he were suing for possession of the land." The word "Government land" explained, *Collector of Thana* v. *Dadabhai Bomanji*, 1 Bom. 352; but in *Daya Chand Nemchand* v. *Hemachand Dharam Chand*, 4 Bom. 515 F B., it was held that a plaint in a suit to restore an attachment of a house which has been reversed at the instance of an intervenient is to be stamped with Court Fee of Rupees ten only.

The valuation for stamp duty of a suit brought by trustees to set aside an attachment should be calculated on the value of the lien claimed by the judgment creditor in the case of an

assignment by insolvent for the benefit of his creditors, *Cecil Stephenson* v. *Baumgatner*, 3 Agra 104, where the suit is for a declaration that a certain property valued at Rupees 400 is not to be sold in execution of the plaintiff's decree for Rupees 1,500 the Court Fee payable is to be calculated on the value of the property and not on the value of the decree, *Durga Prosad* v. *Rachla Koer*, 9 All. 140. When the only parties to a suit are the execution creditor or his representative on one side and the claimant objector or his representative on the other, and the sole question between them is whether the property attached in execution of the decree is or is not liable to be sold in execution of the decree then the value means the value of the subject matter of suit, *i.e.*, the value of the property when the value of the decree exceeds the value of the property. But if the suit be under Section 283 C P. C. then the valuation for the jurisdiction within the meaning of Civil Courts Act (xii of 1887) must be the value of the property attached whatever may be the value of the decree sought to be executed, *Dwarka Das* v *Kameshar Prosad*, 17 All 69 and the cases cited therein See also *Narayana Singh* v. *Ayyasamy Reddi*, 1914 M W N 910

Suit to set aside an execution sale—A suit to set aside a sale on the ground that the attachment is not binding is virtually a suit to set aside an attachment and the Court Fee is to be paid on the value of the land or the value of the decree whichever is less, *Gangadhar Aiyar* v *Vela Chetty*, 14 M L J 144

PARAGRAPH IX.

Application.—This paragraph applies only to suits and not to appeals, *Nepal Rai* v *Debi Prosad*, 27 All 477, *infra In the matter of Mahadeo Prosad* v *Gorakh Singh*, 30 All 547, *infra Raghubir Prosad* v *Sankar Baksh Singh*, 36 All 40 *infra*. *Reference under Court Fee Act*, 29 Mad 367, *infra* But where the sole question in appeal, is the right to redeem, the Court Fees payable, are to be calculated under Section 7, paragraph ix of the Court Fees Act, *Dhiraj Singh* v *Rajaram*, 6 N. L. R. 164; *Gumani* v *Banwaru*, 22 O C 289 54 Ind Cas 733; *Sekharan Nair* v *Eacharan Nair*, 20 M L. J. 120; 3 Ind. Cas 459

See contra *Karaman* v *Norman Cockell*, 1 C W N. 670

Suit for recovery of mortgaged property.—A suit for recovery of property mortgaged from a mortgagee is one for redemption and the suit comes under Section 7, paragraph ix, when one of the questions at issue is whether the mortgage

money is paid off, and, if not what amount is remaining due, *Maruti* v. *Sripati*, 1889 P. J. p. 58. See also *Karaman* v. *Norman Cockell*, 1 C. W. N. 670.

Claim for Redemption regarded as a Consequential Reli f.—In the case of *Pandit Brij Krishna Das* v *Chowdhury Murli Ray*, 4 Pat. L J 703, it was held that a claim for redemption can be regarded as a consequential relief and as such the plaint or the memorandum of appeal is to be stamped with a Court Fee *ad valorem* on the value of the properties.

Redemption—In a suit for redemption of a *kanom* (which is not only a mortgage but also a lease) the plaint is to be stamped with Court Fees according to the *kanom* debt as it originally stood, *Reference under he Court Fees Act*, 14 Mad. 480.

A suit for redemption of a *kanom* and *Puran Kandam* is a suit for redemption and the Court Fees are payable *ad valorem* on the principal amount secured by the instrument of mortgage *Sreedhar Nambudri* v *Peramba Nair*, 1925 M. W. N. 747 ; 1925 A I. R 1254 (Mad.)

Redemption by a Co-mortgagor—The plaint in a suit for redemption by a co-mortgagor is to be stamped with an *ad valorem* fee calculated on the amount secured by the instrument of mortgage, *Bhairam Baksh Singh* v. *Raghubansa Kunwar*, 5 O L J 43 : 45 Ind. Cas. 300 ; *Kodi Venkatappa* v. *Barnala*, 17 Ind. Cas. 442 : 12 M. L. T. 492.

A suit between two persons, who are not co-mortgagors, each claiming exclusive right to redeem the same mortgage, is a suit for redemption, although one of them having succeeded in inducing the mortgagee to allow him to redeem it, thus forcing the other to bring the suit. The valuation of such a suit for the purpose of jurisdiction is the amount of mortgage—money and not the value of the mortgaged property, *Shanker Baksh Singh and others* v. *Ram Bahadur Singh and others*, 1922 A I R. (O.) 45 : 70 Ind. Cas. 311.

Reference to title.—The Court Fee payable by the plaintiff in a suit to redeem a *kanom* mortgage, should be in accordance with the provisions of Section 7 clause ix of the Court Fees Act The fact that the plaintiff refers to his title does not make it obligatory on him to pay any additional Court Fee, the question litigated being the right to redeem. *Kavalappara Moopil Nair* v. *Ammalam Amma*, 1926 M. W. N. 324 ; 95 I. C. 26.

Several Mortgages.—When the mortgagee sues on several mortgages executed by the same mortgagor charging the same properties, the Court Fee is payable on the total value of the

principal sums payable under the deeds and Section 17 of the Court Fees Act does not apply, *Thakur Jawahir Singh* v. *Thakur Balwant Singh*, 7 O. C. 152 ; *Thakur Jawahir Singh* v. *Baldeo Prosad*, 11 O. C. 173

Subject Matter of Suit —The subject matter of the suit is the amount of the mortgage money and not the market value of the lands in suit, *Kubair Singh* v *Atma Ram*, 5 All. 332 ; *Kedar Singh* v. *Matabadal Singh*, 31 All 44 : 28 All. W. N. 296 : 5 All. L. J. 713 : 1 Ind. Cas. 704 ; *Reference under the Court Fees Act*, 5 Mad 288 ; *Reference under the Court Fees Act*, 14 Mad 480 ; *Jallaldeen* v *Vijoyasami*, 39 Mad. 447 ; *Mandoth* v. *Puthanpurayil*, 15 Ind Cas. 587 ; *Rupchand Khemchand* v. *Balvant Narayan*, 11 Bom. 591 ; *Muhammad Khan* v. *Ashak Muhammad Khan*, 106 P. R 1895 F. B. ; *Amrita Bin Bapuji* v. *Naru Bin Gopalji Shamji*, 13 Bom 489, where it was held that if the mortgage is denied and the mortgagee does not say what is due, then the amount found to be due at the date of suit is the subject matter of suit

Mortgage with a Clause of Sale —In suits for redemption of mortgages with clause of conditional sale, if the amount due upon the mortgage be unknown the plaint is to be stamped with Court Fees calculated on the amount of martgage, even though the defendant claims that the lands have become his absolute property, *Ramchandra* v. *Janardan*, 14 Bom 19.

In case of redemption of a Part —Where it is competent to the mortgagor to redeem a portion of the mortgaged property, the debt must be regarded as distributed over the whole property and as regards the portion of the property, sued for, the principal money expressed to be secured must be taken to be proportional to the amount of the debt for which such portion of the property is liable, *Balkrishna Dhondo* v. *Nagvekar*, 6 Bom 324 But where a mortgagee purchased the shares of two out of three mortgagors, and thereby enabled the third mortgagor to sue to redeem his share alone. *Held*, that Court Fees are payable on the share of the plaintiff alone and not on the amount secured by the instrument of mortgage, *Amanat Begum* v *Bhajan Lal*, 8 All. 438 · 5 All W N. 146 F. B.

Where some of the properties mortgaged could not be removed on account of the claim in respect thereto being barred by time. *Held*, that the plaintiff can redeem the rest on payment of proportionate amount and the Court can allow the plaintiff to abandon a part of the claim under Section 373 (Or. 23 rule 1) C. P C., *Husaini Begum* v. *The Collector of Cawnpore*, 29 All 471 : 4 All. L. J. 375 : (1907) 27 All. W. N. 133.

Redemption after Taking Accounts —Where the mortgagor

also prays for payment to him, after taking accounts, and after discharge of mortgage debt, of the amount found due to him, then the plaintiff must state the amount due to him and pay additional Court Fees on the plaint, *Kodi Venkatappa Row* v. *Barnala Suryonarayana*, 12 M. L T 493 17 Ind. Cas. 442; *Vasudeva* v. *Madhava*, 16 Mad 326.

The value of a suit to redeem a usufructuary mortgage for the purposes of jurisdiction is the principal sum expressed to be secured by the instrument, although there may be a claim relating to excess realisation by the mortgagee of profits of the property as, under Section 76, cl (h) of the Transfer of Property Act, the mortgagee is bound to repay an excess amount realised by him Section 17 of the Court Fees Act is not applicable to a suit unless the suit embraces two or more "distinct causes of action" and consequently is not applicable to a case of redemption by a usufructuary mortgagor when excess realization is also claimed by him. *Seth Goji Kishan* v *Sorabjee*, 68 Ind. Cas. 226 · (1922) A. I R. (Nagpore) 259

Where in a suit for redemption, a definite amount is claimed against mortgagee in possession, the Court Fee payable is to be calculated on the principal amount of mortgage money secured, and not on the surplus profits claimed, *Daulatram* v. *Gulab Chand and another*, 76 Ind Cas. 131 · 1924 A. I. R. 346 (Nag)

Redemption and Mesne Profits.—Where the suit is for redemption as well as for surplus mesne profits realized by the defendant—mortgagee in possession, the plaint is to be stamped with a Court Fee calculated on the principal amount secured by the instrument of mortgage only, *Chhiddu Singh and other* v. *Jhanjhan Singh and other*, 45 All 154: 79 I. C. 303: 1923 All I R. 261 (All).

Payments are not to be Deducted.—In a suit for redemption against a mortgagee in possession, where the mortgagee has not paid rent due under the demise and the plaintiff asks for an account in taking which the arrears of rent should be deducted from the amount to be found due under the mortgage. Held that the Court Fees should be computed according to the principal amount expressed to be secured by the instrument of mortgage, *Eacharan Pattar* v. *Appu Pattar*, 19 Mad. 16; *Konna Panikar* v. *Karunakara*, 16 Mad. 328.

Redemption and Recovery of Arrears of Rent.—But where the suit is to redeem and to recover arrears of rent, these are really two distinct causes of action, the Court Fee is to be computed on the arrears of rent and the principal amount of *Kanom* debt as it did not appear that the claim of rent was

intended to be set off against mortgage debt, *Rama Varmah Raja* v *Kadar*, 16 Mad 415 (418)

Improvements.—Where an instrument of mortgage does not expressly secure the amount to be allowed for improvements on redemption of the mortgage, the value of the improvements is not to be taken into account in ascertaining the subject-matter of suit as under paragraph ix of Section 7 of the Court Fees Act The subject-matter is the charge and not the value of the land mortgaged By custom of the country, in *Kanom* demises the value of improvements are payable. Therefore, for valuation for the purposes of jurisdiction of the suit for redemption the value must include the value of improvements, *Zamorin of Calicut* v *Narayana*, 5 Mad 284 F B.

Valuation for jurisdiction.—According to Section 8 of the Suits Valuation Act, (Act vii of 1887) the valuation for the purpose of jurisdiction of suits falling under this paragraph and their valuation for the purpose of determining the Court Fees payable, may be different

The valuation of suit for redemption for purposes of jurisdiction is the amount remaining due on the mortgage or claimed on it by the mortgagee It is that amount and the right connected with it, which is the usual subject of contention in a suit for redemption, *Rupchand Khemchand* v *Balwant Narayan*, 11 Bom 591, *followed in Amrita Bin Bapuji* v *Naru Bin Gopalji*, 13 Bom 489, in which it was held "that where the mortgage itself is denied and the mortgagee does not say what he claims in respect of the mortgage debt, the amount found to be remaining due on the mortgage, if any amount was due at that time, when the suit was filed, would represent the true valuation of the subject matter of suit" Where the plaintiff sought redemption on payment of Rs 266-0-0 but mentioned the sum of Rs 5,257-0-0 as value for jurisdiction Held that the value for the purpose of jurisdiction and Court Fees is the amount in lieu of which redemption is sought and the pleader's fees are to be calculated on that basis, *Monohar Lal* v. *Khusi Shah*, 61 P W R 1917.

The cases of *Kedar Nath* v *Matabadal*, (31 All. 44) and *Jallaldeen* v *Vijayasami*, (39 Mad. 447) were doubted in *Saroda Sundari* v *Akramonessa*, 28 C. W. N. 710 (712) where the Court held that valuation for purposes of jurisdiction of a suit for redemption is not the amount of the principal mortgage money

The valuation for the purpose of jurisdiction is the amount secured by the instrument of mortgage *Sreedhar Nambudri* v. *Peramba Nair*, 1925 M W N 747

Redemption and Claim for Arrears of Rent—In a suit by the plaintiff to redeem the *Kanom*, and to recover the arrears of

rent, it was held that for the purpose of determining the jurisdiction of the Court of appeal the value of the subject-matter of suit was the aggregate value *of the two heads of relief. Konna Panikar* v *Karunakara*, 16 Mad 328 ; *Ramvarmah Raja* v. *Kadar*, 16 Mad. 415.

Appeals.

Allahabad High Court—Where a mortgagor claims to redeem alleging that the whole of the mortgage debt has been satisfied, but the Court granted a decree for redemption on payment of a certain sum, *held*, on appeal by the mortgagor, that the memorandum of appeal should be stamped under the section, according to the principal amount secured by the instrument of mortgage and not on the difference between the sum awarded and the sum admitted by the appellant to be due , but where the mortgagee is the appellant, the Court Fees are to be calculated on the difference between the amount admitted and the amount ordered to be paid by the mortgagor, *Pirbhu Narain Singh* v *Sita Ram*, 13 All 94: (1890) 10 All. W N 23 ; but in later cases this view has been dissented from. Section 7 paragraph ix applies only to suits and no to appeals. Therefore, the Court Fees to be paid are to be calculated *ad valorem* on the subject matter of appeal and not on the sum secured by the instrument of mortgage, *Nepal Rai* v. *Debi Prosad*, 27 All 447 25 All. W. N 40 2 All. L. J. 105; *followed in Mahadeo Prosad* v *Gorakh*, 30 All 547: 20 All. W. N 247 5 All L J 531, where the suit was on the ground that the mortgage money has been satisfied out of the proceeds and nothing remained due and that 4 annas and not 5 annas 4 pies share only has been mortgaged. The criterion laid down in Section 7 paragraph ix of the Court Fees Act, 1870, for determining the Court Fees payable in respect of a suit for redemption or fore-closure does not apply to appeals in such suits In case of appeals or cross objections in suits for redemption or foreclosure and in all cases in which the amount declared by the Court to be due at the date of the decree can be ascertained by reference to the judgment and the decree, the subject matter is the amount at which the appeal or cross objection ought to be valued and future interest should not be taken into account, *Raghubir Prasad* v *Shankar Balksh Singh*, 36 All 40; 11 A. L. J. 1016 · 21 I. C. 723: *modifying Baldeo Singh* v *Kalka Prosad*, 35 All 04. See also *Lalta Prasad* v. *Sheoraj Singh*, 37 All. 452: 15 A L. J. 464. *Prag* v. *Bhagwan Din and others*, 23 A. L. J. 863: 47 All. 926; 1925 A. L R. 734 (All.).

Bombay High Court—Where the money secured amounted to Rs 1,152-15-4 and the Court in decreeing the redemption

suit against the defendants ordered Rs. 568-9-8 to be paid to Umarkhan and Rs 584-5-8 to More and each of the defendants filed separate appeals and each claimed that larger amounts are due *Held* that each of the memoranda of appeals must be stamped with Court Fees according to Section 7, paragraph ix of the Court Fees Act, *Umarkhan* v *Mahamed Khan*, 10 Bom. 41, *Raj Gopal* v *Ram Krishna*, 10 Bom. 54

Where the appeal in a redemption suit relates only to an item in the accounts, the memorandum of appeal need only be stamped as if the whole suit was to recover that amount, *Fakir Mahomed* v *Manakasajishet*, (1883) P. J 39 Where the principal amount is Rs 375 and on the contention of the mortgagee defendant the Court found that Rs. 1,812 is due to the mortgagee and the mortgagee appealed on the ground that the accounts were not properly taken and valued the appeal at Rs 375 the mortgage amount, held that the appeal was properly valued, *Gopal* v *Gangaram*, 1891 P J 218

Calcutta High Court see *Karaman* v *Norman*, 1 C. W. N 670

Lahore High Court —A memorandum of appeal against a decree for redemption on payment of a certain sum is to be stamped with Court Fees *ad valorem* on the amount of money expressed to be secured by the instrument, *Fatteh Singh* v. *Babu Ram*, 3 Lah L J 156 In a suit for redemption, the Court of first instance found that the amount payable on redemption was Rs 570, the appellate Court reduced the sum to Rupees 190 The mortgagee in further appeal prayed that this amount be raised to Rs 1,190 *Held*, that under Schedule I Art I of the Court Fees Act, the Court Fees payable on the memorandum of further appeal should be calculated on Rs 1,000 the difference between Rs 190 and Rs 1,190 which is the value of the subject matter in dispute in appeal, *Banwari Das* v. *Nathu Shah*, 5 P R. 1911 48 P. L R 1911 59 P W. R 1911 9 Ind Cas 676.

Madras High Court.—The provisions as to suits, by or against a mortgagee in Section 7, paragraph ix of the Act are intended to apply to suits and not to cases of appeals therefrom, which latter are chargeable with Court Fees on the subject matter actually in dispute therein as provided for in Schedule I Article I of the said Act as the word "suit" does not apply to appeals and the same rule should apply if the appeal be by a defendant *Reference under the Court Fees Act*, 29 Mad 367: 16 M L. J 287 ; *Vasudeva* v. *Madhava*, 16 Mad. 326.

Where the defendant in appealing against the decree allowing redemption, contended that the plaintiff cannot redeem and if he be found to be so entitled, he can do so on payment of a

larger amount, *held,* that the memorandum of appeal is to be stamped under Section 7 paragraph ix according to the principal amount expressed to be secured by the instrument of mortgage and the Court Fee is the same as that on the plaint.

If the question be as to the amount payable then only the case comes under Art I Schedule I of the Court Fees Act and the Court Fees are payable on the amount in dispute.

In a redemption suit the subject matter of the suit is the existence of the right to redeem, and any question as to the amount is only incidental to that right, *Sekharan Nair* v. *Eacharan Nair,* 6 M. L T 245. 20 M. L. J. 120: 3 Ind. Cas 459.

Oudh Court —Court Fees on the memorandum of appeal should be computed *ad valorem* on the difference between the amount found to be payable by the Court below and the amount which the appellant claims to be paid in cases of dispute as to the amount payable, *Ram Adhin* v *Hanuman,* 9 O C. 153; *Muhammad Hussain* v *Syed Jahan Begam,* 2 O. C 87; *Basudeo Ram* v *Srikrishna Gir,* 13 O. C. 62 5 Ind Cas 941; See also *Sangat Baksh Singh* v *Rawal Dijdeo Baksh Singh,* 25 O. C. 30, 67 Ind cases 968; 1922 A I. R 82 (Oudh); *Gunnani* v *Bauwari,* 220 C. 289; 54 Ind Cas 733

Patna High Court —In case of appeals or cross objections arising out of suits for redemption or foreclosure, when the amount due can be ascertained by reference to the judgment and decree appealed from, it is that amount at which the appeal or cross objection is to be valued and future interest is not to be taken into account, *T K Rawlins* v. *Lachmi Narain Jha,* 3 Pat. L J. 443.

Cross Objection to reduce the Amount Decreed —The party filing the memorandum of cross objection must pay Court Fees calculated *ad valorem* on the sum by which he seeks to reduce the amount decreed, *Mansa Ram* v. *Umra,* 134 P W R. 1911: 213 P. L. R. 1911: 11 Ind. Cas 198.

Suits to have Conditional Sales Declared Absolute —The plaint in a suit to declare a conditional sale declared absolute is to be charged with a Court Fee calculated *ad valorem* under Section 7, paragraph ix clause iii of the Court Fees Act, *Hazara Singh* v. *Mahammad Khan,* 134 P. L. R. 1901.

A suit for possession of land by a mortgagee by conditional sale who claims to have foreclosed his mortgage under Regulation xvii of 1806, is a suit for possession of "land" within paragraph v of section 7 of the Court Fees Act and is not a suit by a mortgagee to foreclose his mortgage under paragraph

ix of section 7 of the same Act, *Telu Mal* v *Lal Singh*, 20 P. R. 1893

Foreclosure Suits.—Where in a foreclosure suit the plaintiff is ordered to redeem a prior mortgage on payment of Rupees 5,914-6-5 and the plaintiff appealed against that decree, *held* that the memorandum of appeal should be stamped *ad valorem* on the amount the plaintiff has been ordered to pay because he wants to get rid of the liability imposed upon him ; *Baji Lal* v *Goverdhan Singh*, 31 All 265 6 All L J 155 1 Ind. Cas. 1000 , *Nepal Rai* v *Debi*, (1907) 27 All W N 40.

C P—In foreclosure suit, the plaintiff mortgagee obtained a decree under Section 86 of the Transfer of Property Act declaring the amount due under the mortgage The defendant mortgagee appealed on the ground that so much is not due and that the amount ought to be reduced. *Held*, that the memorandum of appeal should be stamped with Court Fees, calculated *ad valorem* under Schedule I Art I of the Court Fees Act on the amount by which the amount fixed in the decree is sought to be reduced and not under Section 7 paragraph ix of the Court Fees Act on the amount secured by the instrument of mortgage, *Onkar* v *Lakmichand*, (1909) 5 N L R. 130 Similarly where the mortgage-decree-holder appealed on the ground that the amount so decreed should be enhanced by Rs 8,902 which is also payable under the decree, *held* that Court Fees *ad valorem* on the amount by which the decretal amount is sought to be enhanced are payable, *Basdeo* v. *Dayaram*, 11 N L R 83 29 Ind Cas 609 But when the subject matter of appeal is the right to foreclose, then the Court Fees are payable on the amount secured by the instrument of mortgage, *Dhiraj Sing* v *Rajaram*, 6 N L R 164 F B

Appeal Against Final Decree in a Foreclosure Suit—The appeal against an order passed under Or. 34, rule 3 C P. C. passed in a suit for foreclosure, is to be treated as an appeal from a decree and the memorandum of appeal is to be stamped with *ad valorem* Court Fees, *Ramdhani* v. *Chowdhury Magbul Ahmad Khan*, 18 O C 114

Appeal by Purchaser of a Portion of the Property.—Where the purchaser of the mortgaged property being the defendant in a suit for foreclosure, preferred an appeal against the decree for foreclosure made in the suit, the amount found due on the mortgage being over a lakh of Rupees, to exonerate that property. Held (for the purpose of calculating Court Fees payable on the appeal) that the value of the property affected by the decree only is to be taken into account and as the appellant purchased the property at Rs 2,500 that is to be taken as the valuation for the purposes of Court Fees, *Jagaldhar Narain*

v. *Brown*, 33 Cal 1133: 10 C. W. N. 1070: 4 C. L. J. 121. See *contra, Mahadaji* v. *Balkrishna*, (1882) P. J. 106; where it was held that such cases come under Section 7 paragraph ix of the Court Fees Act.

Further Charge.—In a case where A executed a usufructuary mortgage and after the death of A his widow executed two deeds of "further charge" and the reversioners wanted to redeem the mortgage by A, the trial Court held that the plaintiffs are also liable to pay the amount secured by the subsequent deeds of further charge. The plaintiffs appealed but paid Court Fees on amount of the deed executed by A. *Held*, there being no dispute as to the amount due on the subsequent deeds, the Court Fees paid were sufficient, *Ram Phal* v. *Deputy Commissioner of Bahraich*, 12 O C. 130 2 Ind. Cas. 600.

When the mortgagee defendant in a suit for redemption of a usufructuary mortgage set up a deed of further charge but the trial Court decreed the suit for redemption on payment of the principal money only, and the mortgagee defendant appealed, *held*, that the mortgagee-appellant must pay Court Fee *ad valorem* on the amount by which the defendant wishes the appeal Court to increase the amount, *Lachman Singh* v. *Bahadur Singh*, 16 O. C 354

Where no Additional Relief is Claimed Against Mortgagee.—Where the plaintiff merely seeks to redeem the property without asking for any additional relief against the mortgagee, then the suit falls under Section 7 paragraph 9 of the Court Fees Act, but if he prays that any amount that may be found due to him after taking accounts, and after the discharge of mortgage debt, be paid to him, then he must approximately state the amount so claimed and pay additional Court Fees thereon, *Kodi Venkatappa* v. *Barnala Surjanarayana*, 12 M L T. 493: 17 Ind. Cas. 442 (Madras)

PARAGRAPH X. Specific Performance.

NOTE.—As to contracts which cannot be specifically enforced, see Section 21, Specific Relief Act.

Contract of Guarantee.—Suit against defendants to specifically perform their contract of guarantee by causing restoration of village to plaintiffs, to do all acts necessary to give them full possession and for compensation, are not suit for specific performance and are not provided for and do not come under Section 7, paragraph x of the Court Fees Act but as a suit for compensation such suits fall under Section 7 (1) of the Court Fees Act. *Chunibai* v. *Secretary of State for India*, 1890 P. J. 204.

Suit by a Joint Purchaser.—Where the plaintiffs brought a suit for 3/11 share of two plots of land on the ground that it was agreed between the plaintiffs and the defendants that the lands should be purchased in partnership *Held*, that the suit did not fall under Section 7 (x) of the Court Fees Act and cannot be maintained as the plaintiffs did not pay their share of the money, *Nanda Sing* v *Sunder Sing*, 97 P L R 1901.

Suit for Refund of Purchase Price.—Where the plaintiff offers to perform his part, a suit for refund of purchase price is a suit for specific performance, *Bhashya Karlu* v *Andalammal*, (1918) M W N 896. See also *Lakshmi Ammal in re* 1926 A I R 96 (Mad)

Suit for possession by lessee.—A suit for possession by the lessee of land comprised in a lease is not a suit for specific performance of the contract of lease, and the Court Fee payable on the plaint is the same as in a suit for possession. But the memorandum of appeal must be stamped according to the value of the relief asked for, *Ghulam Sabir* v *Narain Prosad*, 5 A. L J 534 28 (1908) A W N 201.

Clause (a).—Where the mother of a Hindu minor entered into a contract for sale of his land and the vendor sued for specific performance of the contract and for possession and it was found that the minor is bound by the contract ; the suit having been dismissed by the trial court, *held*, on appeal by the plaintiff that he must pay court fees upon the prayer for possession and a conditional decree was passed in his favour to take effect upon payment of the requisite court fee, *Krishna Sami* v. *Sundarappayyar*, 18 Mad 415 5 M L. J 164

Suits for Specific Performance and Possession.—Where the plaintiff asks for specific performance of a contract of sale and possession, *held*, that the suit is in substance one for possession of the property and ought to be valued under Section 7 (v) of the Court Fees Act according to the value of the subject-matter of suit, and it was further *held*, that it was not necessary for their Lordships to hold that in cases of this description, the plaintiff must, not only sue for specific performance of the contract and execution of the conveyance by the defendant but also for recovery of possession, *Madan Mohan Singh* v. *Gaja Prosad Singh*, 14 C L. J 159 11 Ind. Cas. 228. See also the cases cited therein and *Nathekhan* v *Muhammad Khan*, 128 P. W. R. 1918. 46 Ind Cas. 534

Where the plaintiff alleged that the defendants Nos 2 and 3 having contracted to sell certain property to him, received part of the price, and thereafter sold the same property to defendant No. 1 who had notice of the agreement with the plaintiffs, and they asked (1) that the defendants 2 and 3 might b

compelled to complete the sale to the plaintiffs and (2) for possession of the property. *Held,* that the suit is really one for specific performance of a contract and the Court Fee thereon was assessable under Section 7 Clause (x) of the Court Fees Act, 1879. Mr. Justice Tudball observed at pages 295, 296 of the report "as stated by a Bench of this Court in *Mahiuddin Ahmed* v. *Majlis Rai*, 6 All 231, the suit is in substance one for specific performance of a contract and falls *prima facie* under Section 7, Clause (x) of the Court Fees Act, 1870. I have no hesitation in accepting this as the true solution of the case for one simple reason, *viz.*, when a vendor contracts to sell, he contracts as laid down in Section 55 of the Transfer of Property Act, to execute a proper conveyance of the property to the buyer, and tender it to him for execution at a proper time and place on payment of the amount due in respect of the price. He also contracts to give the buyer or such person as he directs, such possession in the property as its nature admits. The plaintiffs in the present case, are clearly seeking to enforce the contract of sale and they also seek from the vendor to do that which he is bound to do under the contract, *i.e*, to execute and register a sale deed and to hand over possession of the property. The suit is one in form and substance a suit for specific performance," *Nihal Singh* v *Sewa Ram*, 38 All 292: 14 A. L J. 434 35 Ind. Cas. 275 See also *Faquir Chand* v. *Ram Dutt*, 1924 A I. R 439 (L).

Where the defendant promised to transfer property in consideration of Rs 600 in cash and some lands belonging to the plaintiff, but failed to carry out his promise which compelled the plaintiff to bring a suit, the Lahore High Court on appeal held "According to Sub-Clause (a) of Section 7 X Court Fees payable in suits for specific performance of a contract of sale will be levied according to the amount of consideration" The Court Fees cannot be paid as if the suit was a suit for possession of land, *Kundun Lal* v. *Anund Sarup*, 73 Ind. Cas. 709: 1923 A I R. 456 (Lahore) See *Gopal Das* v. *Parmanand*, 60 I. C 512 (Lahore) where part of the consideration money was paid, but it was held that the suit was a suit for possession.

A suit to enforce specific performance of a contract to sell land and for possession of the property agreed to be sold is a suit for specific performance falling under Section 7, Cl. X (a) of the Court Fees Act. Such a suit is not a suit for possession falling under Section 7, Cl V (e), nor one embracing "two or more distinct subjects" within the meaning of Section 17 of the Act The delivery of possession is a part of specific performance of the contract of sale, unless the terms indicate that the vendor was not under an obligation to deliver possession, although the decree may have to be executed to obtain delivery

of possession, *Sundara Ramanujam Naidu v. Sivalingam Pillai and others*, 47 Mad 150 45 M. L J 431 (1924) A I R. 360 (M.).

See also the case of *Narayana Kabirayan v. Kandasami Goundan*, 22 Mad 24, where it was held that the plaintiff in a suit for specific performance of an agreement to sell land must also ask for possession and a separate suit for possession does not lie See also *Krishnammal v. Soundararaja Ayyar*, 38 Mad. 698.

But see *contra Nathu Valad Pandu v. Bhudhu Valad Bhika*, 18 Bom 537 See also *Shib Kristo Dah v. Abdool Sobhan Chowdhury*, 15 W R 408, *Abhiram Das v. Sriram Das*, 8 B L. R 421, *Anderson, Wright & Co v. Kalagarla Surji Narain*, 12 Cal. 339 (346).

Valuation.—The valuation of a suit for specific performance for Court Fees is to be assessed *ad valorem* on the amount of consideration and the valuation for jurisdiction shall be the same under Section 8 of the Suits Valuation Act, *Saiyed Ashfaq Hussain v. Saiyed Bunyad Hussain and others*, 77 Ind Cas 874 (1923) A I R 252 (Oudh)

Clause (b).—Suit to recover possession of a date-garden, of which the plaintiff was in possession as a mortgagee, on the ground that he was ousted by the defendants, does not fall under Section 7 (x) (b) of the Court Fees Act but falls under Section 7 (v) of the Court Fees Act, *Chela Mal v. Fazl Beg*, 33 P. R 1880

Clause (c).—In a suit filed in a Sub-Judge's Court the plaintiff prayed that his *mourasi mokarari* right in certain lands be declared and a decree passed against the defendants directing them to grant him a lease, the yearly rent payable under which was Rs 71 The plaintiff valued the suit for the purpose of jurisdiction at Rs 1,100, but gave no materials or data to support the valuation *Held*, that under the provisions of Section 7 paragraph x Clause (c) of the Court Fees Act and Section 8 of the Suits Valuation Act, the suit should have been valued at Rs 71 for the purpose of Court Fees and jurisdiction, and it ought to have been filed in the Munsiff's Court, and as title would accrue after execution of the deed, valuation cannot be made on that basis, *Port Canning and Land Improvement Co., Ltd v. Roson Ali*, 17 C W N 16 15 Ind Cas. 46 See also *Sailendra Nath Mitra v. Ram Charan Pal*, 25 C. W. N 768: 34 C L J 94 66 Ind Cas 268.

Clause (d). Award.—Where the suit was one for recovery of possession of property or specific performance of an award, the Court Fee payable is to be calculated on the value of the property in suit, *U Thi Ha v. U. Thudatthana*, U B R. 1909, 2nd quarter When an agreement to refer to arbitration was

filed in court and arbitrators were appointed, but after the award both parties objected on the ground of misconduct of the arbitrators, and one of the parties succeeded whereupon the other party filed an appeal under Section 104 C. P. C. (Act V of 1908). *Held*, that this clause does not apply but Court Fees were payable under Art 17, Clause (iv), second schedule of the Court Fees Act, *Ram Jawaya* v *Devi Ditta Mal*, 117 P. R. 1916 70 P. L R 1917. 107 P W R. 1916 34 Ind. Cas. 192

Valuation.—Under Section 8 of the Suits Valuation Act, the value for the purpose of jurisdiction and court fees must be the same except in cases coming under Section 7 (x) (d) of this Act.

PARAGRAPH XI.

Application.—In a suit under Sec 95 of the Agra Tenancy Act 1901, to declare the plaintiff's status as an occupancy tenant, *the plaint or memorandum of appeal should bear a* court fee of eight annas as provided by Article 5 of Schedule II to the Court Fees Act, Sec 7 Clause (xi) of the Act does not apply to such a suit, *Ratan Singh* v *Khem Karan*, 40 All. 358: 16 A. L J. 117. 44 Ind. Cas 608

Valuation.—In the case of suits falling under paragraph xi of Section 7 of the Court Fees Act the valuation for the purpose of Court Fees must be the same as the valuation for the purpose of jurisdiction There is nothing to indicate that Section 8 of the Suits Valuation Act should be read subject to the provisions of Section 14, Madras Civil Courts Act, *Vannavalli Seshagiri Row* v *Narayan Swami Naidu*, 26 M L. J. 573: 22 Ind. Cas 374

Where in a suit a declaration of title is sought and also a relief against one of the defendants on the ground that he is a trespasser, the suit is not strictly within Section 7 paragraph xi of the Court Fees Act, *Hira Lal Bannerjee* v *Surendra Nath Sarbanga and others*, 1926 A. I R. 504 (Cal).

Clause (cc).—The court fee payable on plaint in a saint to eject a tenant from the house let out to him is chargeable on one year's rent under Section 7 paragraph xi Clause (cc) of the Court Fees Act as amended by Act VI of 1905 and not on the market value of the house, *Diwan Dilbagh Rai* v. *Fateh Din*, 24 P. L R 1907. See also *Ebrahim Shahib* v. *A. Ismailji*, 1 L. B. R 303 The fact that the defendant denies the relationship of landlord and tenant does not alter the character of the suit and valuation for the purpose of jurisdiction and Court Fees must be the same under Section 8 of the Suits Valuation Act, *Ram Chand* v *Ram Sukh Das*, 27 P. R. 1910: 210 P. L. R 1910: 30 P W. R. 1910: 5 Ind. Cas. 910, but the title of plaintiff is not to be decided on payment of court fees on only

one year's rent, *Balasidhantam* v *Perumal Chetti*, 27 M. L. J. 475.

Suits to eject the tenant by the landlord is governed by of court fees and for the purpose of jurisdiction shall be the same. of court fees and for purpose of jurisdiction shall be the same. The effect of the amendment of the Court Fees Act by Act VI of 1905 is to repeal by implication Section 14 of the Madras Civil Courts Act (III of 1873) so far as suits falling under the newly added Clause (xi) (cc) to Section 7 of the Act of 1870 were concerned, and to apply to them the provisions of Section 8 of the Suits Valuation Act Although suits for recovery of immoveable property from tenants have not been expressly withdrawn from the operation of Section 14 of the Madras Civil Courts Act, the effect of amendments of Section 7 by adding to it Clause (xi) (cc) is to bring such suits also under the operation of Section 8 of the Suits Valuation Act and not under Section 14 of the Madras Civil Courts Act, so that in the case of such suits the valuation for the purpose of jurisdiction is the same as that for Court Fees, *Narayan Swami Naidu* v *Seshagiri Rao*, 39 Mad 873 2 L W 1031 29 M L J 572 18 M L T 398 31 Ind Cas 104 See also *Pramatha* v *Amiruddi*, 24 C W N. 151, where it was held that if persons other than the tenants are parties to the suit the court fees *ad valorem* on the valuation as for possession, is payable.

A suit to eject a *thicadar* after expiry of his lease falls within Section 7 (xi) (cc) of the Court Fees Act

All suits by landlord to recover possession of land from a tenant where the tenancy has terminated either by efflux of time or otherwise, come under Section 7 (xi) (cc) of the Court Fees Act

The word "*tenant*" in clause (cc) includes a person to whom that description would apply immediately before the institution of the suit but whose tenancy has terminated entitling his landlord to eject him, *Ram Charan Singh* v. *Sheo Dutta Singh*, I. L R 2 (Pat) 220 74 Ind Cas 619 1923 All. I R 380 (Patna) See also *Lala Sriram* v *Jagat Narain*, 93 I C 291.

Tenant at Fixed Rate —In a suit to eject a tenant at fixed rent the plaint should be stamped with Court Fees according to the market value of the right, *Ajoodhya Chowbey* v. *Daibee Singh*, 3 Agra Rev 5 See also *Ram Raj Tewari* v. *Girnandan Bhabat*, 15 All 63. 12 All W. N 240.

Tenant holding over—A suit for recovery of possession of land against a tenant who "*holds over*" comes under Section 7 (xi) (cc) of the Court Fees Act, but if the tenant "holds over" in *defiance* of a written notice then he is a trespasser and Court Fees as in a suit for possession are to be paid

A tenant *holding over* is a tenant, who after his right to the occupation under a lawful title is at an end continues (having no title at all) in possession of the land without agreement or disagreement of the person in whom the right of possession resides, *Narayan* v. *Tukaram*, 74 Ind Cas. 93 (Nagpore): 1923 A. I R 310 ; *Champat* v. *Bolak Das*, 1925 A. I. R. 131 (Nag.).

Valuation.—A suit by the landlord for recovery of immoveable property from a tenant, is to be valued at the rent payable for the year next before the date of presenting the plaint and the valuation for purpose of jurisdiction is the same as for the purpose of Court Fees, *Nandan Sing* v *Debi Din*, 12 A L J 933 25 Ind. Cas 975

Valuation (cc).—When a suit was brought for possession of leased property on the ground that the tenancy has terminated, the proper value of the suit is not the value of the immoveable property itself, but the amount of the rent payable for the year next before the date of the presentation of the plaint, *Mohan Lal* v *Bhuteswar*, 83 I. C. 1 , 1925 A. I. R. 142 (All)

Clause (d). *Claim for Improvements.*—A suit to contest the notice of ejectment on the ground that the plaintiff to receive compensation for improvements, before he vacates, is to be stamped on the amount of rent payable for previous year, as claim for improvement is incidental to the decree for possession and is not the subject-matter of suit, *Nurulla* v. *Atr Singh*, 111 P R 1883 , see also *Reference Under Court Fees Act*, 23 Mad. 84 ; *Wasaya* v *Isa*, 4 P. W R. 1915 (Rev.).

Improvements by Tenants—Courts have no power to ask the tenant to pay Court Fees for improvements claimed by him, but are bound to determine the amount, in the suit to contest the notice of ejectment, *Wasaya* v *Isa*, 4 P. W. R. 1915 (Rev).

When the plaintiff sues for redemption of kanom and also prays for deduction of a certain amount claimed as damages for improvement, he is entitled to pay the Court fee after the amount recoverable by way of damage has been ascertained and set off against the amount payable by way of improvement as the words "any sum of money accuring due for rent or otherwise in respect of the tenancy" are wide enough to include damages *N. K. Govindan Nayor* v *Kankirathalikayil Ithalithy*, 1926 A. I. R. 764 (Madras) reversing 1926 A I. R 542 (M.)

Tenant-at-Will—In a suit to eject a tenant at will the Court Fee is 8 annas under Schedule II Art. 5 of the Court Fees Act, *Nurjahan* v. *Marjan Mundul*, 11 C. L R. 91. And an application to the Collector under Section 25 of the Act of 1859 for assistance in ejecting a ryot should also be stamped with a Court Fee of 8 annas as such a proceeding is not a suit, *Pyary Mohan Mookerjee* v. *Kina Bewa*, 11 W. R 90 · 2 B. L. R. A. C. 226.

Clause (e).—A suit was brought for recovery of possession of an occupancy holding against the landlord *and some others* whom the landlord inducted on the land, held that Court Fees should be computed according to market value of the land, *Farzand Ali* v. *Mohanth Lal Puri*, 32 Cal 268, but this case was not approved in the *Secretary of State for India* v. *Dinshaw Naoroji and another*, 1925 A I R. 275 (Sind), where it was held that when in order to avoid delay in execution proceedings a person inducted on the land by the landlord is joined as a party, such a suit falls under Section 7, xi (e) of the Court Fees Act

A suit for possession by a tenant against landlord and *certain other persons* claiming *melawaram* rights under him is governed by Section 7 (v) and not by Section 7 xi (e).

The words *"occupancy of land"* and *"ejected"* are applicable to the case of ryot or persons in actual possession rather than to persons who are only entitled to the *malawaram* rights, *Palaniappa Chetti* v *Sithrave*, 31 Mad. 14 17 M L. J 478 3 M. L T 80

A suit for possession by an occupancy tenant against his landlord on the basis of illegal ejectment falls under Section 7, xi (e) of the Court Fees Act only when there is no question of title to be gone into, but where there is a question of title involved, the case falls under Section 7 (v) of the Act and the Court fees payable would be *ad valorem* on the market value *Krishna Chandra Gountia* v. *Raja Mahakur*, I L R. 5 Patna 208 94 I C 16 1926 A I R 251 (P.) · 7 P. L. T 642.

Illegally Ejected.—The words "illegally ejected" have been explained to mean "ejected nominally in conformity with, but really, in contravention of the provisions of the rent law of ejectment of tenants by landlords, *Sunder Mal* v. *Jessie Caroline Murray*, 16 C L J 375 at page 376: 16 Ind. Cas 963.

Clause (f).—The year next before the date of presenting the plaint "denotes a period of 365 days reckoning backwards from the date of presentation of plaint," *Ghasi Ram* v. *Har Govind*, 28 All 411 3 All L. J 244 · 26 All. W. N. 66.

Fee on memorandum of appeal against order relating to compensation.

8. The amount of fee payable under this Act on memorandum of appeal against an order relating to compensation under any Act for the time being in force for the acquisition of land for public purposes shall be computed accord-

ing to the difference between the amount awarded and the amount claimed by the appellant.

NOTES

Application.—This section applies to appeals by persons claiming compensation An appeal by the Secretary of State against the award of the Court requires a Court Fee of Rs. 10 only under Art 17 Clause (4) of Schedule II of the Act, *Secretary of State* v *Basawa*, 17 Ind Cas 764 17 P. L R. 1912.

In re Assistant Commissioner of Labour, (1924) A I. R 489 (Mad) 1924 M W N 108 78 Ind Cas 435 46 M. L. J. 150, but in 1921 the Land Acquisition Act (1 of 1894) was amended and every award is a decree and appeals will lie accordingly See *Rai Bahadur Narsing Das* v *The Secretary of State for India in Council*, 29 C W N 822 P C. See also *Secretary of State for India in Council* v *K S Bonerjee*, 97 I C. 140. Section 8 of the Court Fees Act being a special provision as regards appeals from Land Acquisition cases, overrides the general provision of Schedule II Art 17 (iv), *Puran Chand and others* v. *Emperor*, 1926 A I R. 343 (Lahore). 92 I C 991.

Application for compensation under the Land Acquisition Act need not be stamped with Court Fees under Section 19 Clause xxxii of this Act

Scope.—Section 8 deals with the fee payable on a memorandum of appeal against an order relating to compensation under any Land Acquisition Act for the time being in force, and under the Act of 1894 such appeals lie to the High Court but under older Act the appeal lay to the District Judge, *Krishna Mohan* v *Raghunandan*, 1925 Pat C W. N 65 F. B.

Power of Appellate Court.—The appellate Court cannot pass a decree for a larger amount than that stated in the memorandum of appeal unless the memorandum of appeal be amended and additional Court Fees put in, *Percival* v *Collector of Chittagong* , 30 Cal. 516.

In cases coming under the Land Acquisition Act (I of 1894), amount awarded under the decree on appeal should be limited to the amount for which Court Fee has been paid on the memorandum of appeal, *Mahomed Ali Amjad* v. *Secretary of State for India*, 30 Cal 501.

Memorandum of Appeal.—The memorandum of appeal against all orders made by the District Judge under the Land Acquisition Act is to be stamped with *ad valorem* Court Fee, *Kasturi* v. *Deputy Collector of Bellary*, 21 Mad. 269.

See also *In re Assistant Commissioner of Labour*, 1924 M.

W. N. 108: (1924) A. I. R 489 (Mad) 46 M. L. J 150, 78 I C. 435.

Disposal of Compensation.—In an appeal from the order of the District Judge made upon a reference by the Collector under sections 18 and 19 of the Land Acquisition Act as to the disposal of compensation money awarded for land taken up by Government under the Act, the memorandum of appeal must be stamped as an appeal from an original decree and not an appeal from an order, *Sheo Ratan Rai* v *Mohri*, 21 All 354 12 All W. N. 96, *Balaram* v *Sham Sundar*, 23 Cal (531)

Orders dismissing Petitions—But if the District Judge dismisses the petition of the petitioner and refers him to the Civil Court, then the memorandum of appeal by the petitioner, is to be stamped with a Court Fee under Art 11, Schedule II of the Court Fees Act, *Hurrish* v. *Bhoba Tarini*, 8 C W N 321

Apportionment of Award—In an appeal from an order for apportionment of compensation between claimant and Government the memorandum of appeal should bear Court Fee stamp *ad valorem* on the value of the land claimed because apportionment really means determination of the amount payable by Government, *Mangal Das Girdhar Das* v *The Assistant Collector of Ahmedabad*, 64 Ind Cas 582 45 Bom 277 23 Bom L R 148 F B

Investment of Award—Where certain *debutter* properties were acquired under the Land Acquisition Act and the Court ordered, under section 32 of the Land Acquisition Act, that the compensation money be invested in Government Promissory Notes and the shebait is to draw interest only and against that order the shebait filed an appeal, and stamped the memorandum of appeal with a Court Fee of Rupees 10 only, held, that the relief sought could be estimated at a money value, at least approximately, and that the case fell under Section 8 of the Court Fees Act and the memorandum of appeal is to be stamped with an *ad valorem* Court Fee calculated on the difference between the amount awarded and the amount claimed by the plaintiff, *Trinayani Dasi* v *Krishna Lall Dey*, 39 Cal. 906: 17 C W N 933 (935), *Mahammad Ali Raja Avergal* v *Ahammad Ali Raja Avergal*, 26 Mad. 287; *Shiva Rao* v *Nagappa*, 29 Mad 117

Case of Several Appeals—Where there are a number of appeals, in which the parties are the same and the lands which are contiguous to one another, form one estate, although in occupation of different tenants, who were not parties to appeals, the Court Fees payable are to be calculated on the value of the consolidated appeals under Section 17 of the Court Fees Act, subject to the limitation in proviso under Art 1, Sch. I of the

Court Fees Act, *Kashi Prasad Singh* v. *Secretary of State*, 29 Cal. 140.

Refund.—Orders for refund of money paid under a mistake is not an award and is not therefore appealable, *Nobin Kali Debi* v. *Banalata Devi*, 32 Cal. 921.

Power to ascertain nett profits or market value

9. If the Court sees reason to think that the annual nett profits or the market-value of any such land, house, or garden as is mentioned in section 7, paragraphs v. and vi., have or has been wrongly estimated, the Court may, for the purpose of computing the fee payable in any suit therein mentioned, issue a commission to any proper person, directing him to make such local or other investigation as may be necessary, and to report thereon to the Court.

NOTES.

Application—This section applies to suits and not to appeals, *Balkaran Rai* v *Gobinda*, 12 All 129: 10 All. W. N. 39 F. B ; *Hari Ram* v. *Akbar Hossain*, 4 All. L. J. 636: 29 All. 749 27 All. W. N. 253 ; 2 M. L. T. 373 F. B.

Local Investigation.—This section as originally drawn, followed the provisions of the existing law (Act xxvi of 1867) on this subject ; but the committee were strongly of opinion that local investigation for the purpose of valuing a suit should be discouraged as much as possible, as, in effect, they entailed to the parties to the suit all the trouble and expense of an extra suit merely to determine the question of the amount due to the revenue. They proposed, therefore, to substitute words the effect of which would be to require the Court to determine, in each case, whether such local investigation was necessary or expedient instead of directing the enquiry to be made as a matter of course on the mere requisition of a party to the suit, *Proceedings of the Legislative Council, (India Gazette Supplement, 26th February, 1870).*

On questions arising as to the proper valuation of a suit, the Court may issue a commission and make enquiry as to the market value and nett proceeds of the property ; the final decision as to valuation rested with the Court, *Uma Sankar Ray*

Chowdhury v. *Sajad Mansur Ali Khan*, 5 B. L. R Ap 6. 13 W. R. 326. Section 9 merely lays down the procedure to be followed when the Court is of opinion that the suit has been under-valued. *It is not open to Court without any evidence* on the point and without following the procedure prescribed by Section 9 to hold that the land in suit is worth more than the present value, *Hari Pada Chakrabarti* v. *Dwijendra Narain Roy*, 5 C L J 28 (notes)

But the Court is not bound to appoint a commissioner to hold an investigation *Hari Ram* v *Akbar*, 29 All. 749: 4 A L J. 636 27 A W N 253: 2 M. L T. 373: and a party has no absolute right to adduce evidence before Court after the report of the commissioner The point must be decided on the facts of every particular case, *Girish Chandra* v *Sashi*, 27 Cal 951

This section does not restrict the Court to Amin's report *but allows the Court to appoint an Amin to make a local investigation* just as in any other case under the Code of Civil Procedure, *Madoosoodan* v *Ryemonee*, 13 W R. 415

Onus of Proving Valuation.—When the defendant asserts that the suit is over-valued, the onus of proving the truth of his assertion lies on him, *Umasankar* v *Mansur Ali*, 13 W R. 326 5 B L R (App) 6, *Wajid Ali* v *Hanuman*, 12 W. R. 484 4 B L R A C 139, *Musst Soobudra* v *Raja Ram Prabash Singh*, 16 W R. 5, *Musst. Dhunnoo* v *Damodar Das*, 2 N. W P 177 But where, whether any commission had been issued or not, the munsiff finds the value to be within his jurisdiction, the Subordinate Judge cannot hold that the munsiff had no jurisdiction to do so, *Ishan Chandra Mookerjee* v. *Lokenath Ray*, 6 B L R A 72 14 W R. 451

Determination of Stamp Duty on Appeal.—Where for the purpose of the stamp duty on an appeal, it is impracticable to ascertain accurately what portion of permanent revenue has been assessed on the lands in dispute in a suit, the appellant should furnish to the registrar a memorandum giving an estimate of the market value and the data on which it is founded. If the registrar considers the estimate clearly insufficient, the Court will issue a commission to ascertain the proper market value, *Exparte Moonee Rangappen*, 3 Mad. H C 352; *Dhunnoo* v *Damodar*, 2 N. W P 177.

Power of Revision.—The power of revision provided by Section 9 relates to an estimate given by the plaintiff of the annual nett profits of the land or the market value of the land, house or garden as mentioned in Section 7, paragraphs v and vi *Chinnammal* v *Madarsa Rowther*, 27 Mad. 480: 14 M. L J 343

Forum of Appeal.—Where the plaintiff valued his claim at Rs. 2,100 but on objection by the defendant, the Court found that valuation ought to be Rs. 24,000 and demanded additional Court Fees. *Held,* that appeal lay to the Judicial Commissioner as the plaintiff contended that the valuation is Rs. 2,100 and Sec. 12 of the Court Fees Act does not bar such an appeal. *Prakash Chandra Sarkar* v *Bishambar Nath Shahi,* 14 C. W. N. 343 · 5 Ind Cas 18. See also *Goswami Sri Raman Lalji* v *Bohra Desraj,* 32 All 222 7 All. L J. 203: 5 Ind. Cas 875.

Procedure where nett profits or market value wrongly estimated

10. (*i*) If, in the result of any such investigation, the Court finds that the nett profits or market-value have or has been wrongly estimated, the Court, if the estimation has been excessive, may, in its discretion, refund the excess paid as such fee, but, if the estimation has been insufficient, the Court shall require the plaintiff to pay so much additional fee as would have been payable had the said market-value or nett profits been rightly estimated.

(*ii*) In such case the suit shall be stayed until the additional fee is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

NOTES

This section had another clause, repealed by the Repealing and Amending Act (Act XII of 1891), which ran as follows:—

Section 180 of the Code of Civil Procedure shall be construed as if the words, "the market value of any property or" were inserted after the word "ascertaining" and as if the words "or annual nett profits" were inserted after the word "damages."

Application of the Section.—Section 54 of the Code of Civil Procedure, Order 7, Rule 11 (Act V of 1908) which directs that a plaint shall be rejected in certain cases, applies only to the initial stages of a suit before a plaint has been registered, whereas the application of this section is not susceptible of

restriction to any particular stage, *Valya Kesava Vadyar* v. *Suppan Nair*, 2 Mad 308; *Padmanand Singh* v *Anant Lal Misser*, F B 34 Cal 20 11 C W N 38 4 C L J. 422, where it was held that Section 54 applies to any stage of a suit

Section 54 of the Code of Civil Procedure and Section 10 of the Court Fees Act have reference to different stages of a suit Where the plaint had been valued *bona fide* and the proper Court Fees had been paid so far as such valuation was concerned, but payment of additional Court Fee was necessitated by the result of the enquiry under section 10 of the Court Fees Act, such a suit can not be held to be barred because when the additional Court Fee called for by the Court was paid the period of limitation for the suit had expired, *Babu Lal* v *Asi Kunwar*, 27 All 197 (1904) 24 All W N 224 1 All L J 631, *Ghasiram* v *Hargobind*, 27 (1907) A W N 18 · 28 All 411 But see *contra*, Section 54 applies to any stage of a suit, *Kishore Singh* v *Sahdal Singh*, 12 All. 553

Scope.—Sections 9 and 10 provide machinery for ascertaining the value of land and houses, the subject matter of a suit, when the Court thinks that the value has been wrongly estimated to the detriment of revenue, *Krishna Mohan Singha* v *Raghunandan Pandey*, 1925 Pat C W N 65 F B

Construction of the Section.—In the case of *Mahammad Salim* v *Nabian Bibi*, 8 All 282 (287), Mr Justice Mahmood said at pages 286-287 "The object of these provisions, as indeed of the Act, is to lay down rules for the collection of one form of taxation, and this, I regard to be the scope of the enactment, though it contains no preamble at all, and, I hold it as a fundamental rule of construction that statutes which impose pecuniary burdens or encroach upon the rights of the subject, or qualify those rights, must be construed strictly The rule applies with special force to such provisions as provide a penalty, whatever its nature may be"

Dismissal of a suit under this section cannot operate as *res judicata* as this is only a penal clause, *Muhammad Salim* v *Nabian Bibi*, 8 All 282.

The dismissal has the same effect as under Section 56 of the Code of Civil Procedure (Or 7, rule 13) in cases of rejection under Section 54 (Or 7, rule 11) of the Code of Civil Procedure, *Balkaran Rai* v *Govinda*, 12 All 129. 10 A. W. N 39

If, as the result of the enquiry under Section 9 of the Court Fees Act the Court orders the additional Court Fees to be paid within a time, and the plaintiffs fail to do so, then plaint is not to be rejected under Section 54 of the Code of Civil Procedure, Order 7, rule 11 but the suit itself should be

dismissed under Section 10 of this Act, *Walli Amanji* v *Mahmad Adam*, 16 Bom. L. R. 763 26 Ind. Cas. 746.

Penalty for Non-Payment.—The original bill contained no effectual provision as to consequences of the non-payment of the additional fee discovered to be due by the result of the local enquiry as to market value of the litigated property. The amended bill empowered the Court to fix the time within which such additional fees must be paid and to dismiss the suit in default of such payment.

The powers conferred by Sections 54 (a) and (c) and 55 (of the Act of 1882), read with Section 582 of the Code of Civil Procedure, or by Section 12 of the Court Fees Act (vii of 1870), read with clause (ii) of Section 10, are intended to be exercised before the disposal of the case, and not after it has been decided finally so far as that Court is concerned *Mahadei* v *Ram Kishen Das and others*, 7 All 528 5 A W N. 140.

But the original suit cannot be dismissed under Sections 10 and 12 of this Act before the appeal is admitted, *Govinda* v *Parameswara*, 1 M L J 528

Clause II.—The word "suit" in clause ii of Section 10, includes an appeal, *Dyal Singh* v *Ram Rakha*, 109 P. R 1912 136 P W. R. 1912 15 Ind Cas 467

Stay of Suit Until the Deficiency is made Good.—Where the munsiff returned the plaint for want of jurisdiction and the plaint was presented to the proper Court where the Munsarim reported that the Court Fee paid was insufficient, whereupon the Court extended the time to pay the deficit Court Fees and stayed the suit, the deficiency was paid within the time and the plaint registered, *held*, that the Sub-Judge was right in staying the suit under Section 10 of the Court Fees Act, *Tajammal Hosain Khan* v. *Nawabdad Khan*, 6 M. L. T. 362 3 Ind Cas 830; *following Hariram* v. *Akbar*, 29 All. 749 F B

Question of Court Fees to be dealt with at the earliest Possible Moment—It is desirable that where the appellate Court has to deal with the question of deficit Court Fees it must be done at the earliest possible moment and the expense of printing a paper book should not be incurred till the question is settled, *Hitendra Sing* v *Sir Rameshwar Singh*, 62 Ind. Cas. 43: (1921) C W. N. Pat 161: 2 P. L T. 383 · 6 Pat L. J. 293 F. B Where upon the proper valuation of a suit an appellate Court finds that there is a deficit in the amount of Court Fees paid by the plaintiff on his plaint and memorandum of appeal, the correct procedure for the Court to adopt is to call upon the plaintiff to make good the deficiency and on his

failing to do so, to enforce its order by dismissal of the suit in the appellate Court. In such cases the rejection of plaint is inappropriate, because Section 10 of the Court Fees Act enjoins dismissal without option, *Brij Krishna Das* v. *Murli Rai*, 4 Pat. L. J. 703: 56 Ind. Cas. 316.

Extension of Time.—The Court is competent to extend the time originally fixed for payment of additional Court Fees, *Chuni Lal* v. *Ajudhia Prasad*, 19 All. 240: (1897) 17 A. W. N. 40; *Dwarka Nath Biswas* v. *Kedar Nath Biswas*, 2 Ind. Cas. 1; *Bhagwandas* v. *Haji Abu*, 16 Bom. 263, *Raikisori* v. *Madan Mohan*, 31 Cal. 75; *Budrinarain* v. *Sheo Koer* L. R. 17 I. A. 1. 17 Cal. 512; *Majlis* v. *Munna Singh*, 84 P. R. 1876. (See Section 148 C. P. C.

Abandonment of Portion of Claim.—Where the plaintiff abondons a portion of the claim at the initial stage of the litigation, the trial Court cannot take action under Section 10 (2) and dismiss the entire suit as this state of things was not considered when the Court Fees Act was passed into law; *Ram Prosad* v. *Bhimon*, 27 All. 151. 24 All. W. N. 198: 1 All. J. J. 577; *Duni Chand* v. *Aziz Khan*, 10 I. C. 207.

Procedure in suits for mesne-profits or account when amount decreed exceeds amount claimed.

11. In suits for mesne-profits, or for immoveable property and mesne-profits, or for an account, if the profits or amount decreed are or is in excess of the profits claimed or the amount at which the plaintiff valued the relief sought, the decree shall not be executed until the difference between the fee actually paid, and the fee which would have been payable had the suit comprised the whole of the profits or amounts so decreed shall have been paid to the proper officer.

Where the amount of mesne-profits is left to be ascertained in the course of the execution of the decree, if the profits so ascertained exceed the profits claimed, the further execution of the decree shall be stayed until the difference between the

fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid. If the additional fee is not paid within such time as the Court shall fix, the suit shall be dismissed.

NOTES.

Amendment.—This section has been amended in Madras by Madras Act V of 1922.

Application of the Section.—The section applies to suits and not to appeals, *Balkaran Rai* v. *Govinda Nath Tewari*, 12 All 129. 19 All W N. 139 F. B. This section also applies to the case of *mesne* profits for which an amount can be and has been claimed in the plaint and in respect of which some court fees have already been paid, *Ram Krishna Bhikaji* v. *Bhima Bai*, 15 Bom. 416, *Vithal Hari Athvale* v. *Govind Basudeb Thosar*, 17 Bom 41; and also applies to the case of past as well as future mesne profits where an amount was claimed and Court Fees paid on the estimated amount of past mesne profits only, *Dwarknath* v. *Devendra Nath*, 33 Cal 1232 3 C L J, 94-95*n*. *Ijjatulla Bhuiya* v *Chandra Mohan Bannerjee*, 24 Cal 954 11 C. W N 1133; 6 C. L. J. 255; *Kewal Kishen Singh* v. *Sookhari*, 24 Cal 173; and also to the case where compensation is claimed from the date of suit to the date on which, under the terms of the decree, possession should have been delivered, *Chedi Lall* v. *Kirath Chand*, 2 All 682 F B

Where it does not apply.—To the case of an interest accruing upon a decree passed in a suit which is not for *mesne* profits, nor for immoveable property nor for an account but is simply a suit for money lent, *Krishnarav* v. *Antaji Birupaksha*, 12 Bom H C 227; *Bhawani Prosad* v *Kutubunnissa*, 27 All. 559: 2 All. L J. 263: (1905) 25 All. W N 84

Frame of suit.—A claim for possession and *mesne* profits may be united or may be brought separately and when united separate court fee for the *mesne* profits claimed is not necessary, *Bebee Syedun* v *Synd Allah*, W. R. 327, Gap Number—which was a case of succession to the office of a Religious Superior in a Mahomedan Religious endowment.

Under the present Code of Civil Procedure (Act V of 1908), Order 7 Rule 2, paragraph ii., the plaintiff is to state approximately the amount of *mesne* profits claimed, and in

suits for accounts he is to state approximately the amount which will be found due to him on taking unsettled accounts.

Every suit should state approximately the amount claimed and *ad valorem* court fees must be paid on that amount, *Nand Kumar Singh* v *Bilas Ram Marwari*, 3 Pat L J 67 · 1 Pat. L W 781. 40 Ind Cas 579 But Court Fees cannot be levied either in the original court or the Court of appeal in respect of possible value of *mesne* profits *pendente lite*, *Bhupendra Kumar Chakrabarti* v *Purna Chandra Bose*, 43 Cal. 650 13 C L J 132, 24 Ind Cas 232, *Bunwarilal* v *Daya Sankar*, 13 C W N 815 *Ram Krishna* v *Bhimabai*, 15 Bom. 416 *Maiden* v *Janakiramyya*, 21 Mad 371

Determination of the amount of mesne profits.—(a) *Application to ascertain the amount of mesne profits Nature of proceedings* —In a suit for possession with *mesne* profits "the proceedings, in determining the amount of *wasilat* are not proceedings in execution of a decree in regard to any fixed sum, but merely a continuation of the original suit and carried on in the same way as if a single suit was brought for *mesne* profits by itself," *Puranchand* v *Ray Radha Kissen*, 19 Cal 132, (136) F B

Proceedings for ascertaining the amount of *mesne* profits on an application for that purpose is not a proceeding "in execution of the decree" and therefore an application for delivery of possession of land decreed will be barred by lapse of three years, *Pryag Singh* v *Raju Singh*, 25 Cal 203, accepted by the Bombay High Court in *Uttam Ram* v *Kishordas*, 24 Bom 149, *Harmonoje Narain Singh* v *Ram Prosad*, 6 C. L J. 462 But see *Ram Kisore* v *Gopi Kantha*, 28 Cal. 242 · *Upendra Chandra* v *Sakhi Chand*, 12 C W N. 3 where an application for ascertaining the *mesne* profits was regulated as an application in execution

Final Decree —Under the present Code of Civil Procedure (Act V of 1908) the amount of *mesne* profits to be awarded are ascertained in the decree itself See Order 20 Rule 12 C P C Paragraph ii of that rule speaks of a final decree in respect of rents or *mesne* profits passed according to the result of the enquiry under Clauses (a) and (c) of paragraph i. of that rule ; but no form of that final decree is given in the schedule

The memorandum of appeal against a final decree under Order 20 Rule 12 (2) C P. C. in respect of subsequent *mesne* profits, is to be stamped with Court Fee calculated *ad valorem* on the amount of *mesne* profits in dispute, *Pilla Balaramanaidu* v *Pilla Sangannaidu*, (1922) 42 M. L J. 184 ; 45 Mad 280 ; 69 Ind. Cas. 722 ; 14 L W. 730

The procedure prescribed by Order 20 Rule 12 of the Code of Civil Procedure supersedes Section 244 (*a*) (*b*) of the Code of Civil Procedure (Act XIV of 1882), *Dawood* v *Rahaman*, 62 Ind. Cas 175.

A decree directing that the plaintiffs should get *wasilat* from the defendants but the same should be ascertained through the intervention of a court-amin and in the course of execution proceedings, was an interlocutory decree only, so far as *wasilat* was concerned and did not become final until the amount of *wasilat* had been ascertained by the amin and until his report had been adopted or confirmed by the Court, *Hajon Manick* v. *Bur Sing*, 11 Cal 17.

Mesne profits subsequent to suit.—"It is manifest that *mesne* profits antecedent to suit and *mesne* profits *pendente lite* stand on very different grounds. In fact as regards the latter, there is no cause of action at the time of the commencement of the suit, and it is only by means of statutory provisions, framed with the obvious purpose of shortening litigation, that they can be awarded in the suit even though they accrued subsequent to the institution of the suit. The *mesne* profits antecedent to the suit have, on the other hand, accrued before the commencement of the suit, and although, therefore their amount may not be stated with absolute certainty, the amount can be mentioned with some approach to approximation. When, therefore, a plaintiff institutes his suit for possession and *mesne* profits antecedent to the suit in a court of limited pecuniary jurisdiction he may be rightly deemed to have limited his claim to the maximum amount for which that court can entertain a suit," *Bhupendra Kumar Chakrabarti* v. *Purna Chandra Bose*, 43 Cal. 650: 14 C. W. N. 506: 13 C L. J. 132: 24 Ind. Cas. 232.

(b) *When the suit is instituted in a Court of limited jurisdiction*.—The Calcutta and Bombay High Courts have held that if the suit be instituted in a court of limited pecuniary jurisdiction, the amount of *mesne* profits to be awarded after it has been ascertained cannot exceed the pecuniary jurisdiction of that court, *i.e.*, the amount of *mesne* profits that can be awarded by such court is the maximum limit of pecuniary jurisdiction of that court *minus* the value of the disputed property, *Golap Sing* v. *Indra Coomar Hazra*, 13 C. W. N. 493: 9 C L J 367; *Hajibhai* v. *Jamshedji*, (1913) 15 Bom L. R. 1021 See also *Manna Lal* v. *Samandu*, 46 P. R. 1906: 91 P L. R 1906, but see *Rameswar* v. *Dilu*, 21 Cal. 550; *Panchanon* v. *Kinoo*, 40 Cal. 56 but in *Bidyadhar* v. *Manindra* F. B 42 C. L. J. 49 the Calcutta High Court held that the

Munsiff can pass a decree for any amount in respect of *mesne* profits accruing, pending suit

But the contrary view is taken by Allahabad, Madras and Patna High Courts See *Sundarsan Das* v. *Ram Prosad*, 23 All. 97 · 7 All. L. J. 963 ; *Madho Das* v. *Ramji*, 16 All. 286 Where a suit was instituted in the court of the Munsiff and was valued at Rs 1,400, but on investigation the amount was found to be Rs 8,000 by the commissioner appointed, and the Munsiff directed that plaint be returned, the High Court directed the Munsiff to resume the trial of suit, *Arogya* v *Appachi*, 25 Mad 543, *Kemmaya* v *Venkata*, 40 Mad 1, *Sheikh Mohammad* v. *Mahtab*, (1917) 2 Pat L. J. 394

In a suit for settlement of partnership accounts a Court is competent to pass a decree for an amount exceeding the limit of its pecuniary jurisdiction, provided it had jurisdicton at the inception of the suit to try the same *Hotchand* v *Tejumal Mulchand and other*, 1925 A. I R. 324 (Sind)

(c) *The date upto which the mesne profits are to be calculated*—See Order 20 Rule 12 of the Code of Civil Procedure, Act V of 1908.

When the decree awards possession and *mesne* profits from the date of the decree to the date of recovery of possession, the date of the decree means the date of the decree of the trial court, *Nanda Kumar Singh* v *Bilas Marwari*, 3 Pat. L J. 116

When the decree is silent, the date up to which the amount of mesne *profits are to be calculated*—Where a decree declared that the plaintiff is entitled to the possession of land with *wasilat* from a date named, directing "the amount thereof to be ascertained on local enquiry" and to bear interest from the date of its ascertainment until payment, without saving more, *held*, that the decree-holder was entitled to *wasilat* until the date of delivery of possession to him, *Fakharuddin Mahomed Ahsan* v. *Official Trustee of Bengal*, L R. 8 I. A 197: 8 Cal. 178 10 C L R 178.

The words *possession with wasilat* means *wasilat* up to the time of possession being delivered, *Dhurum Narain Sing* v *Budhoo Ram*, 12 W R 75 ; *Bunsee Sing* v. *Mirza Muzuf Ali Beg*, 22 W R 328.

Objections to report of Commissioner—*When the judgment-debtor does not appear before Commissioner*—Where an amin has been deputed to make enquiries as to the amount of *mesne* profits to be awarded and the judgment-debtor failed to appear before him and the investigation and the report were made in the absence of the judgment-debtor, such

judgment-debtor is not precluded from pleading that the investigation is erroneous, *Karroo Lal Thakoor* v. *Baboo Taruck Nath Sein*, 7 W. R. 140.

No Court Fees payable.—No court fees are payable in respect of possible value of *mesne* profits *pendente lite*, *Ram Krishna Bhikaji* v *Bhima Bai*, 15 Bom. 416; *Bhupendra Kumar Chakrabarti* v *Purna Chandra Bose*, 42 Cal 650: 13 C. L. J. 132 24 Ind Cas 432; *Maiden* v *Janakiramayya*, 21 Mad. 371 *Bhunwarilal* v *Dayasunker*, 13 C W. N. 815; *Saminath* v *Muthusami*, 20 M L. J. 98 5 Ind Cas 850; *Jafri Begum* v *Syed Ali Reza*, 6 O. C. 351.

Determination of additional Court Fees payable.

(i) *Method of Assessment*—Court Fees already paid are to be taken into consideration in assessing the amount of additional court fees payable, *Ram Bijoy Bahadoor Singh* v. *Jagatpal Singh*, 1 C C 8.

The plaintiff in his plaint, prayed for *mesne* profits only from the institution of the suit till the date of recovery of property and the decree awarded him those profits and directed that those be determined in execution The property was restored to him and the plaintiff applied for execution of his decree for determination of *mesne* profits and there was further execution of the decree by the plaintiff for the realization of the amount of *mesne* profits ascertained, *held*, that no court fees are payable on *mesne* profits, *Ramkrishna Bhikaji* v. *Bhimabai*, 15 Bom. 416. But Mookherjee J in *Ijjatulla Bhuian* v *Chandra Mohan Bannerjee*, 34 Cal 954: 11 C. W. N. 1133, said "In my opinion, there is no substantial distinction, for our present purpose, between *mesne* profits antecedent and subsequent to the institution of the suit, and I am not prepared to accept the decision of the learned Judges of the Bombay High Court to which reference has been made A contrary view has been taken by this court in the case of *Dwarkanath Biswas* v *Debendra Nath Tagore*, (33 Cal. 1232: 3 C. L. J 94-95 N), in which it has been ruled that where a plaintiff asks for past as well as future *mesne* profits and paid court fees on the amount claimed for past *mesne* profits only, the provisions of section 11 of the Court Fees Act were applicable."

(ii) *When the additional court fee is to be paid:*—

The plaintiff must pay the excess amount of court fees before executing the decree, *Arogya* v. *Appachi*, 25 Mad. 543: 12 M. L. J. 35

When the plaintiff sues for damages on the ground of fraud and gives an approximate valuation, then payment of

additional court fee can be made after the decree, *Raghavji Sati* v. *Annamolai Mudali*, 17 M L. J. 628.

Court fee is leviable on an application for ascertainment of future mesne-profits under second part of Section 11 of the Court Fees Act only after the amount of such *mesne* profits has been actually ascertained. *Ram Golam Sahu* v. *Chintamon Singh*, 93 I C 939 (Patna), 7 P L T. 313, I. L. R. 5 Pat.. 361, 1926 Pat. C W N 49 F B

(iii) *Effect of non-payment of additional Court Fees assessed*:—

If the court fees are not deposited within the time fixed, as provided by this section, or within the time so extended, then the application for execution will be dismissed and no further application for *mesne* profits can be entertained as no such decree is in existence, *Kewal Kissen Singh* v. *Sookhari*, 24 Cal. 173 1 C. W N 243 Penal sections must be strictly construed and a dismissal of a suit under its provisions cannot operate as a *resjudicata*, *Muhammad Salim* v. *Nabian Bibi*, 8 All 282. When the amount is ascertained, then section 11 provides that the execution is to be stayed till the difference is paid within a time to be fixed by the Court and if the court omits to fix a time, then the execution is to be in abeyance and there is no bar to the execution being proceeded with as soon as the difference in court fee is paid, *Subhagga Singh* v. *Shiva Nath Singh*, 1 All L. J 350 Where the order to pay additional court fees is contained in the concluding portions of the decree, the order does not form part of the decree and no amendment is necessary when the Court orders the time to be extended The 1st part of the section applies to such a case and the meaning of that part is that execution is to be stayed till the additional court fee is paid, and the Court should fix a time for payment of additional court fees, *Perinan* v. *Nagappa*, 30 Mad 22 2 M L T 23 · M L. J 543.

A decree for partition was passed on 30th June 1900, conditional upon payment of court fees and the decree was not to be executed till the 29th June 1903. It was dismissed as the application to execute the decree was made on the 27th June, 1900, and the court fees were paid; *held*, that the second application was in time as it was competent to the court to order that the execution should begin on court fees being paid within a certain time, *Nathu Bhai Kusandas* v. *Pranjivan Lalchand*, 34 Bom 189: 12 Bom. L R. 13: 5 Ind. Cas 601.

The plaintiff can state any value, but execution of the decree, in case it exceeds the valuation, is not to proceed until the difference in court fees has been paid, *Govinda* v. *Dayabhai*, 9 Bom 22

Payment of additional court fees under Section 11 is not

necessary in order that the execution of a mortgage decree by the appeal court exceeding the amount claimed in the trial court, may be proceeded with *Ram Bhujhwan Prasad Singh* v. *Natho Ram*, 70 Ind Cas 183 (Patna).

Effect of late payment of the deficit court fees.—"It appears to me that whatever the date on which the applicants or their predecessors chose to comply with the Court Fees Act, in a suit for accounts, the date of the decree, for the purposes of Article 182 (of the Limitation Act), must be taken to be that indicated in Section 205 (now Order 20 Rule 7) of the Code of Civil Procedure, *Bhajan Behary Shaha* v. *Girischunder Shaha*, 17 C W N. 959 19 Ind Cas 410.

Power of Court to enlarge time for payment of additional Court Fees.—The Court has power to enlarge time originally fixed for payment of additional court fees on applications for ascertaining the amount of *mesne* profits, *Golab Chand* v *Bahuria Rammurat Koer*, 13 C. L J. 432. (See Section 148 C P. C).

Power of Appellate Court.—The appellate court has no power to extend the time fixed by the original court, nor reduce the amount awarded but no special procedure for dismissal for default in payment of Court Fees under Section 11 of the Court Fees Act is necessary so long as it is clear that the parties have had fair notice of the nature of the proceedings, *Nathersa Rowther* v. *Mahomed Rowther*, 28 Ind. Cas. 890. See also *Priyanath Bachhar* v *Meajan Sardar*, 24 C. L. J. 88: 29 I. C 571.

Abandonment of part of the claim.—Where the plaintiff abandons part of his claim at the initial stage of the suit, in respect of which Court Fees already paid is insufficient, he is not compellable to pay the court fees upon that claim under penalty of having his whole claim dismissed, *Ram Prosad* v. *Bhiman*, 27 All. 151: 24 All. W. N 198. 1 All L. J. 577.

Where a suit for accounts and recovery of account papers was instituted in a court of limited jurisdiction and it was found that the sum which ought to be awarded to the plaintiff exceeded the jurisdiction of the court, the plaintiff ought to be called upon to relinquish the excess and thus place the case formally within the pecuniary jurisdiction of the Court of his deliberate choice; the Court may in such case remit the excess, or presume the excess to have been remitted, *Golap Singh* v. *Indra Coomar Hazra*, 13 C. W. N. 493 at page 449: 9 C. L. J. 767 Where the Court insisted upon payment of additional court fees because a large amount was found due and the plaintiff offered to relinquish that portion of his claim but the Court refused holding that it had no power to allow such

relinquishment and dismissed the suit, *held* that the order is erroneous, *Sellamuthu Servagar* v *Ramaswamy Pillai*, 12 M. L. J. 66.

PARAGRAPH II.

The final provision of Section 11 of the Court Fees Act does not apply to the condition set forth in the Ist paragraph of that section *Gonesh Chandra* v. *Pramathanath*, 11 Ind Cas 73.

In applying Section 11 of the Court Fees Act to a suit for partition and *mesne* profits, the term "decree" in that section should be taken to refer to the final, and not to the interim decree in the suit. Where in a suit for partition and *mesne* profits, the court decrees the claim and awards a specific sum on account of such profits conditional on payment by the plaintiff of additional court fees due in respect of the profits, the Court has no power under Section 11 paragraph ii. of the Court Fees Act to fix any time for payment and the only penalty which the plaintiff incurs in the event of his not paying the court fees is that he cannot execute the decree until he pays the additional court fees Their Lordships proceeded: "The Ist paragraph deals with a case where the profits are settled by the decree and the penalty under it for non-payment of the additional court fee is, that the decree should not be executed till it is paid, under that paragraph the court has no power to fix any time for payment, any order to that effect being mere surplusage . The 2nd paragraph deals only with a case where *mesne* profits are ascertained in execution of the decree, the two paragraphs being mutually exclusive." "The word 'ascertained' implies that the exact sum of money representing the profits has been fixed It is not sufficient for the application of the section to show that a method had been indicated for the purpose of calculating those profits . . . . If the Court proposes to act under Clause (2) it should ascertain the amount of profits in money and state the additional court fees payable and fix a reasonable time for payment of it." *Natharsa Rowther* v *Muhammad Rowther*, 59 Ind Cas 385. See also *Perian Chetty* v *Nagappa Mudaliar*, 30 Mad. 32: 16 M L J 543 2 M L T 23

Suit —The word "Suit" in the last paragraph of Section 11 does not mean the entire suit, *Fulchand* v *Bai Ichha*, 12 Bom 98; *Kewal Kissen Singh* v. *Sookhari*, 24 Cal. 173: I C W. N 243

Part Execution of Decree —The word 'suit' in the last part of paragraph ii of Section 11 of the Court Fees Act does not mean the entire suit It means the claim in respect of *mesne*

profits, *Kewal Kissen Singh* v. *Sookhari*, 24 Cal. 173: 1 C. W. N. 243.

Where there are claims other than *mesne* profits, the plaintiff decree-holder may obtain execution of that other part without payment of additional court fees for *mesne* profits. He need not pay so long as he does not ask for *mesne* profits, *Fulchand* v. *Bai Ichha*, 12 Bom 98.

Valuation.—The plaintiff need only state approximately the amount of *mesne* profits claimed in the suit. See Order VII. Rule 2 of the Code of Civil Procedure, (Act V of 1908). *Bhupendra Kumar Chakravarti* v. *Purnachandra Bose*, 43 Cal. 650: 13 C. L. J. 132: 24 Ind. Cas 232; *Ijjatulla Bhuiya* v. *Chandramohan Banerjee*, 34 Cal. 954: 11 C. W. N. 1133: 6 C. L. J. 255; *Nand Kumar Singh* v. *Bilash Ram Marwari*, 2 Pat. L. J. 67: 1 Pat. L. W. 781: 40 Ind. Cas. 579; see also *Gouri Prosad Koondoo* v. *Reily*, 9 Cal. 112, *Jadoomoney Dabee* v. *Hafez Mahammad Ali Khan*, 8 Cal 295. But see the following decisions:—*Baboojan* v. *Baijnath Dutt Jha*, 6 Cal. 472: 7 C. L. R 539 *Karoo Lal Thakoor* v. *Taruck Nath Sein*, 7 W. R. 140; *Gooroo Das Ray* v. *Bungshee Dhar Sein*, 15 W R 67

Increase of Valuation.—Where the plaintiff brought a suit for *mesne* profits and valued his claim at Rs. 300, but on enquiry by the Commissioner Rs 580 was found due, the trial Court passed decree for Rs 223 only and the plaintiff appealed and valued the appeal at Rs 357, *i e*, the difference, *held*, that no second appeal lay to the High Court as the plaintiff did not amend his plaint and the value could not be increased without the plaint being amended, *Kali Kamal* v. *Fazlar Rahaman*, 15 C. W. N. 454: 7 Ind. Cas. 778.

Forum of appeal.—In case where the court after investigation finds the valuation should be higher and orders return of the plaint, so long as there has been no acceptance by the plaintiff of the order to make good the deficiency in court fees, the original value assigned by the plaintiff must be taken as the value of the suit for the purpose of regulating the jurisdiction of the appellate court; but after the plaintiff has accepted the order made, the value of the suit must be taken as being in accordance with the fee actually paid by the plaintiff, *Goswami Sri Raman Lalji Maharaj* v. *Bohra Desraj*, 32 All. 222: 7 All L J. 203: 5 Ind. Cas. 875. *Ijjatulla Bhuiya* v. *Chandra Mohan Banerjee*, F. B. 34 Cal. 954: 11 C. W. N. 1133: 6 C. L. J. 255 followed.

Where in a suit for accounts the plaintiff, valued the relief approximately at Rs. 600, but the Subordinate Judge passed a decree for Rs. 30,830-9-2 and the plaintiffs paid additional court

fees, the defendant appealed to the High Court from the decree of the Subordinate Judge, *held*, that the appeal lay to the High Court because what the plaintiffs in this account suit demanded was the amount that might be found due to them, and so long as they claim Rs 30,830-9-2 decree to them, they cannot be allowed to say that the subject-matter is only Rs 600 in value," *Ibrahim Issaji* v *Bejanji Jamsedji*, 20 Bom. 265 But the case would be different if the suit is dismissed or the plaint rejected when the valuation would be the valuation made by the plaintiff, *Khusalchand* v *Aajidas*, 12 Bom 675. (677), *Bhagvantrai* v. *Mehta Bajurao*, 18 Bom 40, *Gulab Singhi* v *Lakshman Singhji*, 18 Bom 100 and *Bai Varunda* v *Bai Manegavri*, 18 Bom 207.

Where the plaintiff definitely fixes a certain sum as the amount of his claim, this must be considered as the value of the original suit and the appeal will lie accordingly but when he fixes a certain sum as the amount of his claim only approximately or tentatively and prays that the amount of his claim may be ascertained in the course of the suit, then the amount found by the court to be due to him must be regarded as the value of the original suit for the purpose of determining the form of appeal, *Gulab Khan* v *Abdul Wahed Khan*, 31 Cal. 365 8 C W N 233, applied in *Ijjatulla Bhuiya* v *Chandra Mohan Banerjee*, F B 34 Cal 954 · 11 C W. N. 1133: 6 C L J 255, and *Goswami Sri Raman Lalji Maharaj* v. *Bohra Desraj*, 32 All 222.

Appeals.—As to *mesne* profits claimed prior to the institution of the suit, the memorandum of appeal must bear the same court fees as in the plaint ; but as to *mesne* profits accuring subsequent to the institution of the suit when the decree directs that the same be determined in execution, it is not necessary for the appellant to pay any additional court fees on the memorandum of appeal, *Rudra* v *Radhabhai*, 1883 P J 37. The court fees that have to be paid only upon the *mesne* profits claimed are antecedent to the suit and a plaint or memorandum of appeal is not liable to stamp duty in respect of *mesne* profits subsequent to the suit, *Bunwarilal* v. *Daya Sunkar Misser*, 13 C W N 815 1 Ind Cas 670 See *Ram Krishna Bhikaji* v. *Bhimabai*, 15 Bom 416 ; *Maiden* v. *Janakiramayya*, 21 Mad. 371, but see *Pilla Balaramanaidu* v. *Pilla Sangannaidu*, (1922) 42 M L J 184: 14 L. W. 370: 45 Mad. 280: 69 I. C. 722, where it is held that on appeal from a final decree under Order 20 Rule 12 (2) Court Fees are payable on *mesne* subsequent to suit

Appeal from final decree filed during the pendency appeal from preliminary decree.—Where the plaintiff

the relief for recovery of possession at Rs. 1,020 and of the *mesne* profits antecedent to the suit at Rs. 4,199-8-0 and the trial court made a (preliminary) decree in favour of the plaintiff to recover possession of the land and to realize *mesne* profits to be subsequently ascertained and the defendant appealed and valued the appeal at Rs 5,219-8-0, the aggregate of the above sums and paid court fees *ad valorem* on that amount, the *mesne* profits were subsequently ascertained at Rs. 2,570-1-10 and a final decree for that amount was passed in favour of the plaintiff The defendant filed another appeal against the amount also while the appeal against the first decree was pending, *held*, it is not incumbent on the defendant to pay court fees a second time and the High Court said "If *mesne* profits had been decreed for a higher sum than what is claimed in the plaint and if the plaintiff had obtained a decree for such sum upon payment of additional court fees, the defendant might have been called upon to pay the difference between the court fees payable on the sum ultimately determined and the sum originally mentioned respectively," *Kanchan Mandar* v *Kamala Prasad Chowdhury*, 16 C. L. J. 564 · 15 Ind. Cas 572.

Decision of questions as to valuation.

12. (*i*) Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this chapter on a plaint or memorandum of appeal shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit:

(*ii*) But whenever any such suit comes before a Court of appeal, reference or revision, if such Court considers that the said question has been wrongly decided, to the detriment of the revenue, it shall require the party by whom such fee has been paid to pay so much additional fee as would have been payable had the question been rightly decided, and the provisions of section 10, paragraph (*ii*), shall apply.

Application.—Section 12 has no application to a question of Court Fees payable on a memorandum of appeal presented to a High Court but only applies to the fees payable in other Courts It is true the High Court would have powers conferred by Cl II but the fees dealt with are the fees paid in the lower Court *Krishna Mohan Singha* v. *Raghunandan Pandey*, 1925 Pat C W N 65 F. B.

"It has been ruled that Section has no application where the question for decision is as to the class under which a suit falls and not merely of valuation in that class," *Sunder Mal* v *Jessie Caroline Murray*, 16 C L J 375 (377). 16 Ind Cas 963, see also *Omrao Mirza* v *Jones*, 10 Cal 599 12 C L R 148; *Brojo Coomar Sen* v *Eshan Chandra Das*, 3 C L R 79 Section 12 of the Court Fees Act has no application, where the question raised before the trial court was not a question relating to valuation for the purpose of determining the amount of Court Fees payable on the plaint, but relating essentially to its jurisdiction to entertain the suit "Section 12 should be strictly construed and it cannot be applied to bar an appeal where the question raised was one of the class under which the suit falls and not merely of valuation in that class The section was framed for fiscal purposes," *Peary Shah* v *Surajmal*, 16 C L J 371 17 C W. N. 503 16 Ind Cas 575 See also *Venkata Ramani* v *Narayansami* 1925 M W N 276 48 M L J 685 Section 12 of the Court Fees Act has no application where the valuation is made by the court for the purpose of determining the question whether the suit is within the pecuniary limits of the Court's jurisdiction, and where on the basis of such valuation the plaint is returned for presentation to the proper court, an appeal lies against the order made under Order 43 Rule 1 (a) C P C, *Chithu Kuri Nara Sinha Charyalu Garu* v *Zamindar of Ballhti*, 1919 M W. N 599. 10 L W 178 26 M L. T. 153: 52 Ind Cas 1001.

The finality does not attach to a decision, where such decision as to Court Fees, was arrived at only incidentally in the decision as to valuation for jurisdiction, Section 12 being inapplicable to such cases, *Sikandar Shah* v *Ghulam Nabi Shah*, 151 P. W. R 1918: 47 Ind. Cas 7

If there be no doubt as to the class in which the suit falls, and the section of the Court Fees Act which applies to it, the decision of the first court as to the valuation, which depends on the value of the property, is final; but if, there is a dispute as to the class in which the suit falls, that is to say, the section of the Court Fees Act which applies to it, an appeal will lie. *Govind* v. *Vitha bai*, 1925 A. I R. 435 (Nagpur) see al. *Dada Bhan Killu* v. *Nagesh Ram Chandra*, 23 Bom. 486.

Cross-objection.—Section 12 has no application to a petition of objection under Section 561 (Order 41 Rule 22) C. P. C., *Hasan Bano* v. *Nizamuddin*, (1893) 13 All. W. N. 85.

Rejection of plaint—The procedure set out in Order 7 Rule 11 of the Code of Civil Procedure, 1908, is not applicable to a case in which an appellate Court acts under Section 12 of the Court Fees Act, 1870 In such a case rejection of the plaint is an appropriate remedy and the law enjoins a dismissal without option, though it may be that the result of the dismissal, from the point of view of *res judicata*, is the same as that of a rejection, *Pandit Brij Krishna Das* v. *Chowdhury Murli Rai*, 4 Pat. L J 703.

Construction.—Provisions of a fiscal statute should not be so construed as to furnish a chance of escape and a means of evasion, *Raj Rajeswar Jiu* v *Gati Krishna*, 39 C. L. J. 217: 82 I C 128: 1924 A. I. R 953 (Cal.).

SHALL BE FINAL.

"Final," meaning of—"I have no doubt that the term "final" in Section 5 of the Court Fees Act has precisely the same meaning as the term "final" in Section 12 of that Act. But the subject to which the term is applied in Section 5 is different from that to which it is applied in Section 12. In Section 5 it is applied to a decision as "to the necessity of paying a fee or the amount thereof," whereas in Section 12 it is applied to a decision as to every question relating to valuation for the purpose of determining the amount of any fee chargeable under the Chapter (Chapter III) on plaint or memorandum of appeal," *Balkaran Rai* v. *Gobind Nath Tewary*, 12 All 129 (152): 10 All. W N. 30 F. B.; *Muhammad Sadik* v *Muhammad Jan*, 11 All. 91 considered.

The provision as to finality attaches to the value of the suit and not to the value of the stamp to be used, *Raj Kristo* v *Bama Sundari*, 23 W. R. 296.

Decision as to valuation.—"According to the terms of the section, it is only the decision of a court on a question relating to the valuation of a suit that is final but the decision of the special judge in this case does not dispose of any question relating to valuation far less any question relating to the valuation of a suit," *Upadhyaya Thakur* v. *Persidh Singh*, 23 Cal 723 (729) F B.

Under Section 12 of the Court Fees Act (Act VII of 1870) the decision of the court of first instance upon a question of valuation, not affecting the question of category is final, *Wilayat Ali Khan* v. *Umardaraz Ali Khan*, 19 All. 165 (168):

17 All W N 33, but see *Kanaram* v. *Komappan*, 14 Mad 160, where the trial court erroneously estimated the value and the High Court held that it is not precluded by Section 12 from revising it, and reversing the decree

If the appeal court holds that the suit is rightly classified by the court of first instance, the latter court's valuation must be upheld as final, but if the appeal court be of opinion that the suit has been wrongly classified, the decision of the lower court as regards valuation must necessarily be set aside, should such valuation be different from what would have to be placed on the suit if rightly classified, *Mahna Singh* v. *Bahadur Singh*, 100 P. R 1919 50 Ind Cas 125; *Bawa Mangal Das* v. *Mohant Niranjan Das*, 56 P. R. 1895 *approved.*

Where the court calls upon the plaintiff to make up court fee on his plaint and the plaintiff contends that the court fee already paid is sufficient, the High Court will not interfere in revision It is for the plaintiff to make up his mind whether he will pay or not If he fails to comply, the plaint will be rejected and unless the order is final under Section 12 the plaintiff will have a right of appeal. If the order is final neither an appeal nor revision will lie, *Chuni Lall* v. *Roshan Lal*, 120 P R 1919 53 Ind Cas 427. No appeal lies against an order rejecting a plaint under Order 7 Rule 11 of the Code of Civil Procedure, when such order refers to the valuation only, *Chandra Moni Koer* v *Basdeo Narain Singh*, 4 Pat. L. J 57 · 49 Ind Cas 442 See also *Mani Lal* v. *Durga Prasad*, 80 I C 667 · 1924 A I R 673 (P.).

An appeal would lie from the decision of a court in respect of the class in which a suit falls, but no appeal shall lie from a decision in respect of the valuation of the suit in that class, *Dada* v *Nagesh*, 23 Bom 486.

The scheme of the Act appears to be that in the subordinate courts under Section 12 the trial court alone has power to decide what is the proper valuation for the purpose of determining the fee payable on the plaint and the Appellate Court alone has the like power with regard to the memorandum of appeal presented in that Court, even if the trial Court has arrived at a different valuation, and each Court's decision is final subject to the provisions of the second clause of Section 12, *Krishna Mohan Sinha* v. *Raghunandan Pandey*, F. B. 1925 Pat. C. W. N. 65 (78): 1925 A. I. R. 392 (Patna).

Order not final if the party had no notice.—The decisions of the court in order to be final must be between parties to the suit on record and after they have had an opportunity of being heard, and not a decision based on the Munsarim's report before the filing of the plaint or the memorandum

Cross-objection.—Section 12 has no application to a petition of objection under Section 561 (Order 41 Rule 22) C. P. C., *Hasan Bano* v. *Nizamuddin*, (1893) 13 All. W. N. 85.

Rejection of plaint—The procedure set out in Order 7 Rule 11 of the Code of Civil Procedure, 1908, is not applicable to a case in which an appellate Court acts under Section 12 of the Court Fees Act, 1870 In such a case rejection of the plaint is an appropriate remedy and the law enjoins a dismissal without option, though it may be that the result of the dismissal, from the point of view of *res judicata*, is the same as that of a rejection, *Pandit Brij Krishna Das* v. *Chowdhury Murli Rai*, 4 Pat L. J. 703

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Under Section 12 of the Court Fees Act (Act VII of 1870) the decision of the court of first instance upon a question of valuation, not affecting the question of category is final, *Wilayat Ali Khan* v. *Umardaraz Ali Khan*, 19 All. 165 (168):

V of 1908) empowers it to do so, *Chandramoni Koer* v. *Basdeo Narain Singh*, 4 Pat. L. J. 57: 49 Ind Cas. 442

See also *Mani Lal* v. *Durga Prasad*, 80 I. C 667 · 1924 A. I. R. 673 (Patna)

Cases where the High Court interfered in revision.

Calcutta High Court.—See *Ramrup Das* v. *Mohunt Sitaram Das*, 12 C. L J 211 14 C. W N 932 7 Ind Cas 22 Where the court below on an erroneous view of law, decided that no court fees are payable, *held*, the High Court can interfere in revision under Section 15 of Indian High Courts Act, *The Collector of Maldah* v *Nirod Kumari Dassi*, 17 C W N 21; *Sundar Lal Maruari* v. *Jessie Caroline Murray*, 16 C. L J 375

Bombay High Court—*Vithal Krishna* v *Bala Krishna Janardan*, 10 Bom. 610: 1886 P. J 339.

Madras High Court—When an erroneous order is made for payment of court fees, the party affected need not wait till the final dismissal of the suit The High Court can interfere under Section 115 of the Code of Civil Procedure, *Dodda Sonnekappa* v. *Sakrayya*, 36 Ind Cas 831 Where the lower Court wrongly orders the plaintiff to pay additional Court Fees the practice of the Madras High Court is to interfere in revision without leaving the aggrieved party to the cumbrous remedy of filing an appeal after the rejection of plaint for non-payment of Court Fees demanded, *Sudalimuthu* v *Peria Sundaram*, 48 M. L J 514. Section 12 of the Court Fees Act does not prevent the High Court's power of revision, where it is not a mere question of amount or arithmetical calculation, *Konaran* v *Komappan*, 14 Mad 169

Patna High Court.—The Patna High Court has adopted the practice of the Calcutta High Court in interfering in revision with orders as to amount of court fees payable, *Nauratan Lal* v. *Stephenson*, 4 Pat L. J 195 See also *Bankey Behary* v. *Ram Bahadur*, 4 Pat L J 281. 4 Pat · L W 281. (1918) Pat C. W. N. 223, *Mani Lal* v *Durga Prasad*, 80 I. C. 667.

But where after court has ordered the deficiency in court fees to be made good, the matter is brought up before the High Court by an application under Section 115 of the Code of Civil Procedure, it was held that the order to make up the deficiency being an interlocutory order, the High Court will not interfere in revision as no irremediable harm will be done by the interlocutory order, *Musst. Lachmibati Kumari* v. *Nand Kumar Singh*, 5 Pat. L. J 400 · I Pat. L. T. 268 · 56 Ind. Cas 649.

Punjab Court.—The order for rejection under Order 7 Rule 11 (*b*) is appealable as the order is a decree, hence a petition of revision of the order is incompetent, and Section 12

does not bar an appeal against such an order, *Sada Kaur* v. *Buta Singh*, 25 Ind. Cas. 565 · 80 P. R 1914: 265 P. L. R. 1914. 167 P W R. 1914.

Appeal.—In the following cases the *Calcutta High Court* held that there is nothing in Section 12 of the Court Fees Act to prevent the plaintiff from appealing on the ground that the case falls in a different category, *i.e.*, governed by a different article of the Court Fees Act than that found in the lower court—*Ganga Monee Chowdhurani* v. *Gopal Chunder Ray*, 12 W. R. 214; *Ajjodhya Pershad* v. *Gunga Pershad*, 6 Cal. 249 in which it was held, an appeal lies from an order rejecting a plaint as insufficiently stamped, *Omrao Mirza* v *Mary Jones*, 10 Cal. 55 · 12 C. L. R. 148, *H. C. Studd* v *Mati Mahto*, 28 Cal. 334; *Prokash Chandra Sarkar* v *Bishambhar Nath Sahi*, 14 C. W. N. 343: 5 Ind. Cas. 18; *Pirya Sha* v *Surajmal Marwari*, 17 C. W N. 503. 16 C L. J. 371. 16 Ind Cas. 575; *Sundar Lal Marwari* v *Jessie C Murray*, 16 C L. J. 375 16 Ind. Cas. 963.

See also *Taraprasanna Chongder* v. *Nrisingha Murari Pal and others*, 51 Cal 216 · 28 C W. N. 683 39 C. L. J. 212: 81 I C. 763.

Allahabad High Court took the same view as the Calcutta H C. in *Balkaran Rai* v. *Govinda Nath Tewari*, 12 All 129: 10 All W. N. 39, *modifying—Muhammad Sadik* v. *Mohammad Jan*, 11 All 91, *Ajmad Ali* v. *Mohammad Israil*, 20 All. 11; 17 All W N 157 F. B.

Bombay High Court—The Bombay High Court although it took a contrary view in *Narayan Madhavrao Naik* v. *Collector of Thana*, 2 Bom. 145, yet in later decisions, has accepted the views of the other High Courts See *Vithal Krishna* v. *Balkrishna Janardan*, 10 Bom 610 F B, *Dada Bhau Kittur* v. *Nagesh Ram Chandra*, 23 Bom 486

The *Madras High Court* also took the same view in *Annamalai Chetti* v. *Lt. Col J C. Cloete*, 4 Mad. 204. The Chief Justice said at page 207 "In order to determine the court fees payable on a plaint or memorandum of appeal, it is necessary to decide to which of the several classes, recognised by the Court Fees Act, the suit belongs Where the fee prescribed for a particular class of suits is regulated by the value of the subject matter of the suit, the further question arises, what is the valuation for the purpose of determining the amount of fee? In our judgment the terms of Section 12 of the Court Fees Act ought not to receive a larger interpretation than what they fairly admit of. They do not declare the decision of the Court in which the plaint or appeal is filed, final, on all questions which may arise respecting the court fees, but on every question relating to the valuation for the purpose of determining the amount

of the fee. This may be a mere arithmetical calculation ; it may involve the decision of a simple question of fact On the other hand, apart from the valuation necessary to determine the amount of the fee, questions of much nicety may arise respecting the fee properly leviable on the suit , it is conceivable that the legislature designedly prohibited appeal in the one case and permitted in the other." See also *Kanaran* v *Komappan*, 14 Mad 169, *Champadan* v. *Kummimal*, 4 Mad. L. J. 173 (1914) , *Lakshmi Amma* v. *Janamajayan Kambiyar*, 4 Mad. L. J 183 , *Venkata Ramani* v *Narayanasami*, 1924 M. W N 276 48 M L. J 488

Patna High Court.—When an order necessarily involves a decision of the category or lass under a suit falls, even though it incidentally decides a question of valuation, the order is appealable, *Chandramani Koer* v *Basdeo Narain Singh*, 4 Pat. L. J. 57 ; 1918 (Pat) C W N 264 . 49 Ind. Cas 442

A decision as to category is not final but a decision as to valuation is final *Manilal* v *Durga Prasad*, 3 Pat 030 80 I. C. 667 · (1924) A I R 673 (Patna).

The Punjab Court.—See *Pir Mahammed* v *Ghulam Hyder*, 42 P. R 1874 ; *Ganda Mal* v *Mussammat Mahataho*, 67 P R 1878 , *Shah Alam* v *Mahammad*, 2 P. R 1889 , *Bawa Mangal Das* v *Mohant Niranjan Das*, 56 P R 1895 , *Musst Sada Kaur* v *Buta Singh*, 265 P L R 1914 80 P R 1914 167 P W R 1914 25 Ind. Cas 565 , *Mahna Singh* v *Bahadur Singh*, 100 P R 1919 11 P. W R 1919 50 Ind Cas 142

Oudh Chief Court —See *Dwarka Prosad* v *Oudh Commercial Bank, Ltd* , 5 O C 319 , *Gumani* v *Banwari*, 22 O C. 289 54 Ind Cas 733.

Compliance with order.—The fact that a certain sum was put in compliance with the order of Court did not preclude the plaintiff from disputing the decision of the Court afterwards in appeal, *Mani Lal is Durga Prasad*, 3 Pat 930 80 I. C. 667 : 1924 A I R. 673 (P)

Objection to valuation —Objection as to valuation was entertained in appeal court in admitted cases of under-valuation In *Sheo-Govind Rawut* v *Abhai Narayan Singh*, 5 B L R. Ap 17, the High Court *held*, that as the under-valuation is admitted, the court of appeal below was right in entertaining the question as to valuation as it affected the jurisdiction of the trial court Decided on April 26, 1870 In *Kaladdin Guru Bakas* v *Raghoji*, (1 Bom H. C A C 62), it was held that an objection as to improper valuation cannot be raised for the first time in appeal court See also *Wilayat Ali Khan* v. *Umardaraz Ali Khan*, 19 All 165 and other cases cited at page 30 supra

CLAUSE II.

Power of higher Court to realize deficiency.—Where the trial court disposed of the suit without any decision as to sufficiency of court fees as the defendant did not raise any objection as to the sufficiency of court fees but on appeal the District Judge demanded additional court fees and on failure of the plaintiff to comply with the demand of the District Judge the decision of the lower court was set aside, *held*, on second appeal, that the District Judge acted rightly as a formal decision of the trial court is not necessary before an appeal court can interfere, *Shama Sundari* v *Hurro Soondary*, 7 Cal. 348: 8 C. L. R. 528, *Kalachand Sen* v *Anundo Kristo Bose*, 22 W. R. 433 *dissented from*.

Section 12 of the Court Fees Act was evidently framed for fiscal purposes, as is manifest from the second clause of the section which shows how a court of appeal may review the decision of the primary court upon a question of this character only when there is a loss of public revenue, *Peary Shah v. Surajmal*, 16 C. L. J. 371 16 Ind Cas 575. 17 C. W. N. 503.

Although under Section 12 Clause (1) of the Court Fees Act, a decision on the question of court fees by the court of first instance is final between the parties, it can be re-opened by the appeal court itself under Clause (2) of this section in the interest of revenue, *Tekana Kavandan* v *Alagiri Kavandan*, 25 Ind. Cas 506.

A plaint insufficiently stamped, was filed in the city Civil Court, Madras, and was accepted by the Sheristadar who was entrusted with the duty of checking the stamp of that court as duly stamped The suit was dismissed and on appeal to the High Court the Court fees paid on the plaint was found insufficient and the Taxing Officer of the High Court demanded the deficiency to be made up, held that decision by the Sheristadar amounted to a decision by City Civil Judge and the Taxing officer was right in demanding the difference, *Wallace* v. *Lakshmi Ammal*, 49 M. L. J. 608 · 1926 A. I. R. 96 (7).

When a memorandum of appeal to the lower appellate court is insufficiently stamped, the deficit court fee should be levied by the appellate court, *Chenappa* v. *Raghunatha*, 15 Mad. 29. It is sometimes the duty of the appeal court to see that proper court fees were paid in the lower court. It is the duty of the High Court to see that proper court fees are paid in the High Court and the courts below from which the case came, *Narain Prosad* v. *Kameshwar Prosad Singh*, 3 Pat. L. J. 101: 43 Ind. Cas 489 The appeal court is bound to require the (plaintiff) appellant to make good the deficiency, *Nihalchand* v. *Ghulam Muhammad*, 19 Ind. Cas. 856 (Punjab).

Written statement.—But where no court fees have been paid on a written statement claiming a set off, court has no power to demand payment of additional stamp, *Muthu Emlappo Pillai v. Vimker Maistry*, 36 Ind Cas 957 10 Bur. L. T 242, but see *contra Chenappa v Raghunatha*, 15 Mad. 29 *supra*.

It is open to the appellate court to demand additional Court Fees from a party who has obtained a set off in the trial Court without paying Court fees on his written statement and to allow the set off on payment of such court fees, *Maneklal Vadilal v Chandulal Balabhai Shah*, 28 Bom L. R 525 94 I. C 646

The position of court.—"If it were the appellant who was in fault and failed to pay the full court fee due from him in the lower court, this court certainly could stay the hearing of his appeal and, if the deficient fees were not paid, could dismiss the appeal, and no doubt would do so, but where the appellant is not in fault, it would be most unjust that the respondent by failing to pay the court fee due from him in the lower court should have it in his power to prevent the appellant from having his appeal heard," *Narain Singh v. Chaturbhuj Singh*, 20 All 362 (1898) 18 All W N 72

The Court of appeal when admitting an appeal is entitled to demand under the provisions of Section 12 (2) the proper Court Fees payable in the appellate court as well as in the Court below by reason of the judges in the court below not having given a decision as to the proper amount of the Court Fees payable

When a Court receives a plaint, petition or any other pleading and files it as properly stamped, its act amounts to a decision that the proper court fees have been paid If according to the practice prevailing in the courts, the Chief Ministerial officer files a plaint, petition or other pleading as properly stamped or that proper court fee has been paid, his act is an act of the Court within the meaning of Section 12 (1) of the Court Fees Act, *Lakshmi Ammal, In re*, 1926 A I. R. 96 (Mad)

No demand can be made by court after dismissal.—Where after dismissal of suit, the court ordered the deficit court fee to be paid by the plaintiff and on his default, the court of its own motion ordered attachment of the property, *held*, that the court had no jurisdiction to do so, *Jatra Mohan Sen v. Secretary of State for India*, 46 Cal 650. 52 I. C. 535. If the appeal to the High Court be dismissed, owing to the appellant's failure to pay the deficit court fees on the memorandum of appeal or for any other reason, the High Court has no power to call upon the respondent to make good the deficiency in court fees payable by him in the lower appellate court and has no

power to restrain the respondent from executing the decree obtained by him as the High Court is *functus officio*, *Kumar Radhika Raman Prosad Singh* v. *Mussammat Janki Koer*, 4 Pat. L. J. 472 . 1919 (Pat.) C. W. N 276 . 51 Ind. Cas. 756; *Abdullah* v. *Secy of State for India*, 1925 A. I. R. 131 (L.).

The powers conferred by Section 54 (*a*) and (*b*) and 455 read with Section 582 C. P. C., or by Section 12 of the Court Fees Act, read with paragraph 2 of Section 10 of the Court Fees Act, are intended to be exercised before the disposal of the case, and not after it has been decided finally so far as that court is concerned, *Mahadei* v. *Ram Kisen Das and others*, 7 All. 528 (1885) 5 All W N. 140 , *Shanghai Life Insurance Co., Ltd.* v. *Mrs. Helen Constance Brown*, 9 Bur. L. T. 43 . 32 Ind. Cas. 534

When it is intended to recover deficit court fees from a respondent before the High Court, or in the lower court, the proper course is to admit the appeal for hearing and to take action under Section 12 of the Court Fees Act read with Section 10 of the Court Fees Act. The court is then in full seisin of the case and can punish the defaulting plaintiff or first appellant, as the case may be, by the dismissal of the suit or appeal Where however the appeal before the High Court is dismissed under Order 41 Rule 11 C P C. no such action can be taken till the order of dismissal is reviewed and the appeal admitted for hearing, *Rajendra Narain Singh* v *Ramdil Singh*, 5 Pat. L. J. 508 :. 58 Ind. Cas. 271 , *Govinda Nambi* v. *Parameswar Nambi*, 1 M. L J. 528.

Undertaking to pay.—"The breach of an undertaking given to the court by a litigant, pending proceedings, on the faith of which the court sanctions a particular course of action or inaction, is misconduct amounting to contempt. It is further well settled that when a person is guilty of such contempt he places himself in a perilous *position so as not to be heard by the court till he has purged his contempt*."

Raj Rajeswari Jiu v. *Krishna*, 39 C. L J 217 (220, 221): 82 I C 128 1924 A I. R. 953 (Cal.).

Realization of Court Fees from respondent.—When it is discovered in second appeal that the memorandum of appeal to the lower appellate court was insufficiently stamped but the respondent on being called upon to pay the deficit court fee, did not make good the deficiency, *held*, that the proper procedure was not to dismiss the appeal by the respondent to the lower appellate court but to stay the issuing of the decree, if any, of the High Court in favour of the respondent until such time as the additional court fee due by him might be paid,

Narain Singh v. *Chaturbhuj Singh*, 20 All 362 (1898) 5 All. W. N. 72.

The Allahabad High Court in the case of *Madan Lal* v. *Jaikishen Das*, (25 All W N 277 1 All L. J. 392), *held*, that if the respondent persists in refusing to pay the deficit court fee then the appeal to the lower appellate court will be dismissed. But this case was overruled in the Full Bench Case of *Mohan Lal* v. *Nand Kishore*, 28 All. 270 23 All W. N. 280: 2 All L. J. 839, where the same High Court *held*, that when it is discovered that the respondent in the High Court, when appellant in the lower appellate court, had not paid proper court fees on his memorandum of appeal and has not paid the deficit court fees when called upon to do so, the proper procedure would be to stay issuing the decree, if any, of the High Court *in favour of the respondent and to dismiss the respondent's* appeal in the lower court But the Patna High Court has held in *Pandit Brij Krishna Das* v *Chowdhury Murli Rai*, (4 Pat. L. J. 803), that if a plaintiff respondent fails to make good a deficiency in the court fees paid on the plaint, it is competent to the appellate court to call upon him, to pay the deficit court fee, and, in the event of his failure, to dismiss his suit

Refund of fees paid on memorandum of appeal

13. If an appeal or plaint, which has been rejected by the lower Court on any of the grounds mentioned in the Code of Civil Procedure, is ordered to be received, or if a suit is remanded in appeal, on any of the grounds mentioned in the first Schedule, Order XLI, Rule 23, of the same Code, for a second decision by the lower Court, the Appellate Court shall grant to the appellant a certificate, authorizing him to receive back from the Collector the full amount of fee paid on the memorandum of appeal:

Provided that, if, in the case of a remand in appeal, the order of remand shall not cover the whole of the subject-matter of the suit, the certificate so granted shall not authorize the appellant to receive back more than so much fee as would

have been originally payable on the part or parts of such subject-matter in respect whereof the suit has been remanded.

NOTES.

Change in law—According to Section 158 of the Code of Civil Procedure (Act V of 1908) the reference to Section 351 of the Old Code (Act VIII of 1859) is altered to that of the New Code (Act V of 1908).

Rejection.—Rejection of a plaint, for insufficiency of court fees can be made under Order 7 Rule 11, *Of a memorandum of appeal*, See Order 41 Rule 3 Section 351 of the Code of 1859 (Act VIII of 1859) corresponds to Section 562 of the Code of 1882 (Act XIV of 1882) and to Order 41 Rule 23 of the present Code (Act V of 1908) This section says that where the case has been disposed of on a preliminary point and that the decision of that preliminary point has been reversed on appeal, then the appeal court is to remand the case for hearing to the lower court.

Preliminary point.—Preliminary point means a matter preliminary to the general determination of the suit which the parties bring before the court for decision, *Krishnan Dutti* v. *Muthan Palandi*, 22 Mad. 172 See also *Abdul Gafar* v. *Muhammad Ziauddin*, 2 P. R. (1908), 12 P W R. 1908.

Application for refund.—In an application for refund it is obligatory upon the court to consider whether the memorandum of appeal was or was not properly stamped, *Lakhi Narain Jagdeb* v. *Chowdhury Kirtibas Das*, 18 C. L. J. 133: 19 I. C. 971.

Refund on remand.—Where a suit has been dismissed on preliminary ground by the court of first instance and the appeal was allowed with costs by the High Court on appeal; afterwards on the application of the judgment-debtors the decree was amended, the High Court remarked that an order ought to have been made for refund of court fees and the amount paid in court fees ought not to have been shown in the decree and the decree was ordered to be amended, *Surendra Nath* v. *Girija Nath*, 15 C L J. 659: 15 Ind Cas. 220 See also *Nand Kumar* v. *Bilas Ram*, 3 Pat. L. J. 116: 1917 (Pat.) C. W. N. 377, *Bhausing Ragho* v. *Chaganiram Harachand*, 42 Bom. 363: 20 Bom L. R 348 · 45 Ind. Cas. 552.

It is only when the appeal is remanded under Order 41, Rule 23 that the Court Fees Act permits refund of court fees and not in other cases, *Jaganath* v. *Maruti*, 12 N. L. R. 126:

30 Ind Cas. 241. See also *Vithoba* v. *Waman*, 42 Ind. Cas. 304 (Nagpore); *Nand Kumar* v *Bilas Ram*, 3 Pat L. J. 116: 43 Ind. Cas 855 · 4 Pat L. W. 100.

Refund on Part Remand—Where an appeal was remanded in part, the appellant is entitled to a return of the proportionate part of the stamp duty paid by him. *In the matter of the petition of Doorga Dass Dutt*, B L. R. Sup. Vol 511: 6 W. R. Mis 65. Sevester Vol 9 p 176. See also the 2nd paragraph to the section.

Re-payment of Court Fees on the reversal of the order of remand.—Where a suit has been remanded by the lower appellate court under Section 562 C P C (Act XIV of 1882) and the court fees on the memorandum of appeal and cross objection were refunded to the respective parties, on appeal the High Court, *held*, that the remand was bad and returned the appeal to the lower appellate court for decision Here the appellants repaid the stamp, *held*, that the respondents only were entitled to be heard, *Rajmal Motiram* v *Tapu Bin Kundlipa Matee*, 1898 P J 72

No refund on remand—When the decree appealed against was set aside as against some of the respondents but was left out standing against other respondents, *held*, that the successful appellants were not entitled to a certificate for refund under section 13 of the Court Fees Act. *In the matter of Bhagawanti*, 14 All L J. 671 39 Ind. Cas 28

Partition suit.—Court fees cannot be refunded when the appeal court after deciding on the merits of the appeal arising out of a partition suit remanded the case in order that the partition might be finally carried out *Held*, also that the memorandum should be stamped as an appeal from a decree, *Umrao Alikhan* v. *Abdul Subhan Khan*, 28 All. W. N. 40. 5 All. L J. 545

A refund certificate cannot be granted by court for court fees paid on an appeal against a preliminary decree, *Nand Kumar Singh* v. *Bilas Ram Marwari*, 3 Pat. L. J. 116. 4 Pat. L W 100 1917 (Pat.) C. W N. 377: 43 Ind. Cas. 855.

Compromise.—No refund can be made when a suit is compromised. *The Land Mortgage Bank of India, Limited* v. *Gregory Paul Mahtus*, (March, 1870) 4 B. L. R Ap. 96. See *contra In the matter of Gujendra Narain Ray*, 11 W. R. 158 (decided on 23rd February 1869) where the High Court held that if the petition of compromise is filed before the case is on the cause list, the appellant is entitled to a full refund of court fees (this is in accordance with the code then in force)

Order of Court—When the plaintiff paid court fees under

orders of court on a valuation made by it, subsequently after hearing the parties the trial court dismissed the suit, on appeal the High Court accepted the plaintiff's valuation but refused to grant a certificate of refund holding that its powers are limited to cases specified in sections 13, 14, 15 and there fore it cannot refund the excess amount paid *In the matter of the petition of Maulvi Syud Zoynooddeen Hossein Khan*, 11 B. L. R. A. C. 370.

But see *In the matter of G. H Grant*, 14 W. R. 47; *Bebee Syedun* v *Syud Allah*, W. R. Gap Number, 327 (329).

Refund of Court Fees paid under order of Court.—Where under order of court excess court fees were paid, the High Court on appeal ordered excess court fees paid, to be refunded, *Bebee Syedun* v *Syud Allah*, W R Gap Number 327 (329); *Indar Sen Singh* v. *Rikhai Sing*, 30 All. 103: 28 All W. N. 31: 5 All. L. J. 18; *Katchi Rowther* v. *Naina Mohammad*, 28 Ind. Cas. 300.

Full value to be refunded.—Under Section 13 of the Court Fees Act, 1870, an applicant is entitled to receive from the Collector the full amount of court fees paid on the memorandum of appeal without any deduction, on production of the certificate of the appellate court, and no further sanction is necessary for the refund of the court fees, *B. G. Resolution* No. 8912, dated 13th December 1890; *I. G. Resolution* No. 132, dated the 11th January, 1888.

Mistake of party, no refund—Where the final decree in a partition suit was drawn up, by mistake, on a court fee stamp, instead of on a non-judicial stamp and the plaintiff asked for refund. *Held*, that the plaintiff is not entitled to a refund, as a matter of right, *Maulavi Rafiuddin* v. *Syed Ahmed*, 12 C. L J. 324 · 7 Ind Cas. 94: 14 C. W. N 1101

Mistake of Counsel. No refund.—Where an appeal was filed *forma pauperis* and the application was rejected and then the pauper appellant stamped his memorandum of appeal with proper court fees, but it was found that the period for appealing has expired, whereupon counsel for the pauper appellant asked for a refund, *held*, that the counsel having been heard in support of the appeal so stamped, no refund can be granted, *S. Annamallay* v. *O. M. R. M. Chetty Firm*, 22 Ind. Cas. 884: 7 L. B. R. 90.

No refund in cases of payment under orders of the Taxing Officer.—There is no provision in the Court Fees Act which empowers a court to order refund of any amount paid on demand by the taxing officer, *Puran Singh* v. *Kesor Singh*, 39 P. R. 1907; *Hitendra Singh* v. *Maharajadhiraj of Darbhanga*, 7 P. L. T. 392. But see *Indar Sen Singh* v. *Rikhai Singh*,

30 All. 103 : 28 All. W. N 31 : 5 All. L J. 18 where the court said that refund ought to be made. But the Revenue authorities may refund on application.

Refund of excess stamp paid.—Where the stamps on a memorandum of appeal were over-paid the High Court directed the taxing officer to issue necessary certificate to entitle the appellant to apply to the revenue authorities to obtain a refund of the excess paid in court fees. *Harihar Guru* v. *Ananda Mahanty*, 40 Cal. 365 · 25 Ind. Cas. 498. See also the case of *In the matter of G H. Grant*, 14 W. R 47. So where a party, in appealing against an order stamped the memorandum of appeal as an appeal from a decree. *Held*, that Section 13 applies, and the excess stamp duty should be refunded to him, *Orr* v. *Nagappa*, 16 M. L J 30.

Refund of excess stamp paid by mistake.—The Government has directed that excess court fees stamp put in by mistake in matter of administration should be refunded *I. G. Resolution* No 132, dated the 11th January, 1888. The Government has directed that excess court fee stamps put in by mistake in matters of administration should be refunded. *I. G. Notification No 2025 of 1872, dated 17th September, 1872, p 782*

Refund on return of plaint —The High Court has inherent power to order refund of the value of stamps on a memorandum of appeal which has been returned as not sufficiently stamped. *Bhubaneswari Prasad* v *Kishen Dayal*, 72 I. C. 405 (Patna.)

Order for refund under inherent power of court.—The case of *Harihar Guru* v *Anand Mahanty*, 40 Cal. 365, was followed in *Chandra Dhari Singh* v. *Tippan Prosad Singh*, 3 Pat. L J 452 . 46 Ind. Cas. 271, where it was held that although there is no provision in the Court Fees Act for refund of court fees over-paid by mistake, the High Court in the exercise of its inherent power vested in it can under Section 151 C P. C. order refund of the excess court fees paid See *also Probhas Kumar* v. *Nithar Lal*, 28 C. W. N. 928 ; 1924 A I. R. 1054 (Cal.).

Appeal from final decree.—When an appeal was pending from the preliminary decree, it was not necessary for the mortgagee to file another appeal from the final decree. The Court Fees paid on the memorandum of appeal from the final decree was ordered to be refunded. *Swami Dayal* v. *Muhammad Sher Khan*, 1925 A. I. R. 39 (Oudh). *Kanhaiya Lal* v. *Tribeni Sahai*, 36 All. 532 ; 12 A. L. J. 876 ; 24 I. C. 827.

Refund of excess stamp in Probate, Letters of Administration, etc.—See Section 19A, 19B of the Court Fees Act.

Other cases of refund :—Refund under Presidency S. C. C. Act.—See Presidency S C. C. Act, Section 73.

Refund under Madras City Civil Courts Act.—See Section 13 of that Act, *I. G. Notification* No. 4650 dated 10th September, 1889, dated the 14th September Part 1, Pages 506—509.

Refund of fee on application for review of judgment.

14. Where an application for a review of judgment is presented on or after the ninetieth day from the date of decree, the Court, unless the delay was caused by the applicant's laches, may, in its discretion, grant him a certificate authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee which would have been payable had it been presented before such day.

NOTES.

Object of the Section.—This section was enacted in modification of Section 377 of the then Code of Civil Procedure. By the latter, on the application for review of judgment presented after ninety days from the date of such judgment, the same fee was levied as if it were a plaint in a suit, whilst an application made within ninety days was subject only to the court fee chargeable in ordinary applications. In many cases when the delay had accrued through the laches on the part of the applicant, this rule had been found to entail hardship; and the measure of relief provided by this section, under which a refund of the difference between the amount paid and that which would have been payable had the application been presented within ninety days, might be obtained in such cases, was thought to be called for. *Indian Gazette dated 26th February, 1870*

N. B—See Section 114 and Order 47 of the Code of Civil Procedure (Act V of 1908).

According to Art. 5 of Schedule 1 of the Court Fees Act, half the fee leviable on the plaint or memorandum of appeal is to be paid, if the application is presented within the ninetieth day from the date of decree, and according to Art. 4 of the same schedule, full court fee is to be paid if presented on or after the ninetieth day.

Computation of time.—In computing the 89 days from the date of the decree, the time during which the Court is closed is not to be excluded and an application cannot be filed on half court fee on the re-opening day if the Court be closed on the 89th day. *Held* also, reference to Limitation Act cannot be made, that Act not being in *pari materia* with the Court Fees Act, *Kota*, 9 Mad 134 Where the application for review of judgment was filed on the re-opening day of the High Court after vacation, but after the ninetieth day fell during the vacation—*held*, that full fee leviable on the memorandum of appeal must be paid in the first instance, but that the court, if satisfied that the delay was not caused by the laches of the applicant, might direct a refund of one half of such fee *In re Doorga Prosanno Ghosh*, 9 C L R 479

An application for review of judgment presented on the ninetieth day as the previous day was a Sunday, should be stamped with full fee leviable on the plaint or the memorandum of appeal To such cases under the Court Fees Act, Section 5 of the Limitation Act of 1877 has no application Section 10 of the General Clauses Act, being applicable only to Acts of the Governor-General in Council and Regulation made on or after the 14th January, 1887, is inapplicable to such cases The general principle that a party may be taken to have done an act within the prescribed time, if he has done it on the first day the court is open after expiry of the holidays within which the prescribed time terminated, is inapplicable in view of Section 14 of the Court Fees Act *Sayera Bibi* v. *Bhutnath Haldar*, 15 C L J 505, 15 I C 455

Refund.—Where an application for review was filed with half Court Fees, the High Court said, "The position is that if the strict letter of law be followed, the applicant should be called upon to pay one half of the Court Fee in addition to what he has paid before, and we should then forthwith grant a certificate under Section 14 for a refund of this sum This would be an idle formality which would needlessly delay the consideration of this application on the merits." The application was then heard on the merits, *Nowrang Singh* v. *Janardan*, 39 C L J 344, 1924 A I. R 994 (Cal).

Stamp duty paid on a petition of the nature of an application for review, may be refunded where there is no final decision *Prosanna Chunder Ray Chowdhury* v *Nabo Kristo Chatterji*, 18 W. R. 434.

As to refund of fees paid on application to the Chief Court or the Court of the Financial Commissioner of the Punjab for the exercise of its revisional jurisdiction under the Code of Civil Procedure—see the Punjab Courts Act, 1884 (18 of 1884).

Section 72, as amended by the Punjab Courts Act, 1899 (25 of 1899), Punjab and North West Code

For other cases see also under Arts 4, 5 of Schedule 1 of this Act.

Refund where Court reverses or modifies its former decision on ground of mistake.

15. Where an application for a review of judgment is admitted, and where, on the re-hearing, the Court reverses or modifies its former decision on the ground of mistake in law or fact, the applicant shall be entitled to a certificate from the Court authorizing him to receive back from the Collector so much of the fee paid on the application as exceeds the fee payable on any other application to such Court under the Second Schedule to this Act, No. I, Clause (*b*) or Clause (*d*).

But nothing in the former part of this section shall entitle the applicant to such certificate where the reversal or modification is due, wholly or in part, to fresh evidence which might have been produced at the original hearing.

NOTES.

Amendments.—The word "application" was substituted for the original words "plaint or memorandum of appeal" by the Court-fees Act Amendment Act, 1870 (20 of 1870), Section 1

Elements.—In order to attract the operation of Section 15 of the Court Fees Act, the conditions requisite are that there should be an application for review of judgment, that it should have been admitted, that on the rehearing, the Court should have reversed or modified its former decision on the ground of mistake in law or fact and that such reversal or modification is not due to fresh evidence which might have been produced at the original hearing. *Probhas Kumar* v. *Nithar Lal*, 28 C. W. N. 928: 1924 A. I. R. 1054 (Cal.).

Object of the section.—It was proposed through the provisions of the section to guard against the increased fee working harshly by allowing a refund of the enhanced amount payable under its operation, where the result of the application was the reversal or modification of the previous judgment on such grounds as amounted to an admission of the Court's order —*Indian Gazette*, 26th February 1870.

Refund.—The power of court to refund is limited to Sections 13, 14, 15 and if the case does not come under any of these sections then the party must apply to the Government, *In the matter of the petition of Moulvie Synd Zoynoodeen Hossein Khan*, 11 B L R A C 370

"Section 15 authorizes a successful applicant for review of judgment, save when he succeeds wholly or in part on the ground of fresh evidence, which he could not produce at the original hearing to receive back nearly the whole of his fee he had to pay on his application for review" *In the matter of Maqbul Ahmad*, 31 All 294 (299) · 6 All L J. 215: 1 Ind. Cas 209

See also *Labhu Ram* v *Amir Chand*, 73 P L R. 1916 · 35 Ind Cas 633 105 P W R 1916, where it was held that an application made to a Court can be treated as an application for review and the Court upon granting the application would remit the Court Fees under Section 15 of the Court Fees Act even if already paid

Section 15 provides for re-payment in certain cases of so much of the fee paid on an application for review as exceeds the fee payable on any other application to the Court under the Second Schedule, Art I Cl (b) or (d) where the court modifies or reverses on review its former decision, *Krishna Mohan Sinha* v *Raghunandan Pandey*, F. B. 1925 Pat C. W. N. 65 , 1925 A. I. R. 392 (Patna)

Section 151 C. P. C.—Where an application was under Section 151 C P. C. and Order 47 Rule 1 C. P. C. and the Court modified its former decision, *held* that refund should be ordered, *Probhas* v. *Nithar*, 28 C. W. N. 928: 1924 A. I. R 1054 (Cal) See other cases under Section 13 *Supra*.

Review of consent decree obtained by fraud—Where the appellant suppressed all processes to the respondent and obtained a decree on compromise by filing a false vakalatnama and the respondent on coming to know of the compromise filed an application to set aside the order on compromise, it was *held*, that as the court has inherent power to correct its own proceedings when it has been misled and as the order could be summarily set aside by the court, no court fee as

on an application for review need have been paid on the application, *Peary Chowdhury* v. *Sonoo Das*, 19 C. W. N. 419: 27 Ind. Cas. 628.

Applications for review of judgments are to be stamped with court fees actually leviable on the memorandum of appeal in which the judgment sought to be reviewed, was passed irrespective of the relief claimed, *M. C. Husania* v. *Sahib Nur*, 20 Ind. Cas. 3: 254 P. L. R. 1913.

Sub-section II.—Sub-section II refers to cases when the reversal or modification is due to evidence which could have been produced at the original hearing. In such cases no certificate for refund can be granted See *In the matter of Maqbul Ahmad*, 31 All. 294; 6 A. L. J. 215; 1 Ind. Cas. 209 and *Probhash* v *Nithar*, 28 C W N. 928.

16. *Repealed by Schedule V. of the Code of Civil Procedure (Act V. of 1908).* It was as follows:—

"When any appeal is presented to a civil court, not against the whole of a decision, but only against so much thereof as relates to a portion of the subject-matter of the suit, and, on the hearing of such appeal, the respondent takes, under section 561 of the Code of Civil Procedure, an objection to any part of the said decision other than the part appealed against, the court shall not hear such objection until the respondent shall have paid the additional fee which would have been payable had the appeal comprised the part of the decision so objected to"

NOTE —Schedule V of Act V of 1908 was again repealed by the Second Repealing and Amending Act 17 of 1914, Section 3.

Multifarious suits.

17. Where a suit embraces two or more distinct subjects, the plaint or memorandum of appeal shall be chargeable with the aggregate amount of the fees to which the plaints or memoranda of appeal in suits embracing separately each of such subjects would be liable under this Act.

Nothing in the former part of this section shall be deemed to affect the power conferred by

the Code of Civil Procedure Section 9. (Sch. I, Order II, R. 6 of Act 5 of 1908.)

NOTES.

Application.—This section applies only to plaints and memoranda of appeal in suits and to applications or appeals arising out of those suits, *Upadhya Thakur* v *Persidh Singh*, F. B 23 Cal. 723 (734)

Alternative Relief.—This section does not apply where the plaintiff sues in the alternative for one of two reliefs, but only applies to a case where cumulative relief is sought by the plaintiff, *Kashinath Narayan* v. *Govinda Bin Piraji*, 15 Bom. 82. See also *Motigarri* v *Pranjiwandas*, 6 Bom 302 ; *Monohar Ganesh* v. *Bawa Ram Charan*, 2 Bom 219 ; *Girdhari Lal* v *Ram Lal*, 21 All. 200

Section 17 also applies to cases where alternative reliefs are asked for in respect of different causes of action, *Jawahir Singh* v *Baldeo Prosad*, 11 O. C 173 , *Hashmatunnissa Begam* v. *Muhammad Abdul Karim*, 29 All. 155 4 All L J 127 1907 All W. N. 4 , *Neelakandhan* v *Anantanarayan*, 30 Mad 61

Section 17 of the Court Fees Act applies to alternative reliefs claimed with reference to more causes of action than one. The operation of the section is not necessarily confined to cases where cumulative reliefs are sought, *Dharamchand* v *Gorelall*, 47 Ind Cas 886 ; and also to separate reliefs claimed in the alternative, *Nur Kabi* v *Umar Baksh and Pata Mal*, 41 P R. 1910. 6 Ind Cas 715 · 65 P. W R 1910 , *Mukhlal Gir* v. *Ramdheyan Rai*, 44 Ind Cas 143 (Patna) , *Dasarate Moshy* v *Joy Chand*, 1925 A I. R. 193 (P) ; 78 I C 530.

The section, therefore, refers to "multifarious suits" in which two or more distinct causes of action have been joined under Section 45, (Order 2 Rule 3) of the Code of Civil Procedure *Reference under the Court Fees Act*, 16 All 401 : (1894) 14 All. W. N. 124.

Where a suit was brought to recover lands from defendant No. 2, on the plea that the said lands were surrendered by defendant No 1, and it was claimed in the alternative that in case of failure of the 1st prayer the defendant No. 1 may be ordered to refund the amount paid to him to induce him to surrender the land, *held*, that the suit embraced two distinct causes of action and separate Court Fees must be paid on each relief. *Hirderam* v *Ram Charan*, 78 I C. 103 : 1924 A. I. R. 169 (Nag)

Where the plaintiff claimed in the alternative but paid

court fees on the lesser of the two alternative reliefs, that relief alone should be tried. The Court Fees, in such cases, are to be paid on the larger of the two reliefs, *Kundun Lal* v. *Anund Sarup*, 1923 A. I. R. 456 (Lahore).

Where two reliefs are identical in actual money value, but but diffierent in respect of Court fees leviable on each, then the amount of Court Fees payable is to be determined on the relief carrying the higher fee. *Dasarate Moshy* v. *Joy Chand*, 78 I. C. 530, 1925 A. I. R. 193 (P.)

Where a plaint prays for one of two reliefs in the alternative, based on one cause of action, the larger of the two reliefs determines the value of the claim and Section 17 of the Court Fees Act does not apply. *Raja and others* v. *Muttalli and others*, 1926 A. I. R. 467 (Lahore) ; 96 I. C. 826.

Distinct Subjects.—The words "distinct subjects" in Section 17 of the Court Fees Act mean distinct causes of action or distinct kinds of relief, *Shamaili Rani* v. *Ram Dai*, 1 All 552 ; see also *Mulchand* v *Shib Charan Lal*, 2 All. 676 F B, *Chedilal* v. *Kirath Chand*, 2 All. 682 F. B.; *Kesori Lal Ray* v *Sharut Chandra Mozumdar*, 8 Cal. 593 : 10 C. L. R 359 F. B.; *In re P. R M. N. Perchiappa Chetty* v. *Po Kin*, 5 L B. R. 94 : 4 Ind Cas. 289.

The words mean also distinct matters which may form the subject of separate suits though contained in the same instrument, and the word "*subject*" is not capable of precise definition, *Neelakhandhan Nambudripad* v *Anantanarayana Pattar*, 30 Mad. 61 · 16 M L. J. 462 : 1 M. L T. 426 ; *Kelu Achan and others* v *Cheriya Parvathi Nethian*, (1924) All. I. R 6 (Madras) : 72 Ind. Cas. 87.

The word "subject" in Section 17 of the Court Fees Act means "cause of action," *Nauratan Lal* v. *Stephenson*, 4 Pat. L J. 195 : 1922 (Pat.) C W. N. 79 See also *Waziri Begum* v. *Shashi Bhusan Roy*, 74 Ind. Cas. 820 (1924) All. I. R. 77 (Patna) ; *East Indian Railway Co.* v. *Ahmadi Khan*, 1924 Pat C W. N 175 : 78 Ind. Cas 415 ; *Hirderam* v. *Ram Charan*, 78 Ind. Cas 703 : 1924 A. I. R. 169 (Nag.).

Damages and Injunction.—Where the plaintiff sued the defendants for wrongful cutting and removing certain trees and in the meantime during the pendency of suit obtained injunction against the defendants restraining them from removing certain trees cut down, the trial court dismissed the suit and ordered the plaintiff to pay damages to the defendants under Section 497 C. P. C. (XIV of 1882). The plaintiff appealed against the whole of the decree, and the damages awarded. *Held*, the Court Fees on each head should have been given and the lower appellate court should have allowed

the plaintiff to amend his memorandum of appeal, *Misr Behari Lal* v. *Bhagwan Das*, 13 All. W. N. 220

Ejectment, damages and rent.—Claims for ejectment and damages are not distinct subjects but if a claim for rent is added, that claim is a distinct subject as it arose out of the contract of tenancy and can be enforced by a separate suit, *A. W. Zamal* v *Cyril Brown*, 36 Ind. Cas 883. 10 Bur. L. T. 60: 8 L. B. R. 529.

Inheritance—The plaintiff sued his brothers and a nephew for his share, inherited by him under the Hindu Law and under a will, of the moveable and immoveable properties by cancelling a deed of gift in favour of the nephew. *Held*, that the plaint and memorandum of appeal are chargeable with the aggregate amount of the fees to which the plaints and the memoranda of appeal in separate suits for the moveable and immoveable property would have been liable under the Act, *Mulchand* v *Shibcharan Lal*, 2 All 676 F B

Hundis.—In a suit upon three *Hundis* executed on the same day in favour of the same person and executed by the same person, the plaint ought to bear the aggregate amount of fees payable on 3 plaints in a suit on each of them as each of them constitutes a separate cause of action, *Pursottum Lal* v *Lachman Das*, 9 All 252 7 All W N 42

Khatas—Where the plaintiff sought to recover a sum as the balance due to him on seven separate transactions which took place on different dates, *held*, that the several items in the *khata* constituted distinct subjects within the meaning of Section 17 of the Court Fees Act, *Ramchandra* v *Appaji*, 1887, P. J. 271, but a suit for balance due on a *khata* does not come under Section 17 as the balance due is the subject matter, *Hiralal Motichand* v *Ganpat Lahanu*, 46 Bom. 142. 64 Ind. Cas 486 (1922) A I R (Bom) 376

Landlord and Tenant—In a suit by the landlord against 25 sets of tenants that the entries in the Record of rights as to the nature of the holdings are incorrect and were of a different kind, are 25 distinct subjects under Section 17 of the Court Fees Act Court fee payable for each is Rs 10, *Lachman Sahu* v *Sheikh Abdul Karim*, 4 Pat L J. 299: 51 Ind Cas. 767

In a suit by tenant against landlord with regard to 78 different holdings a similar decision was given, *Chethru Mohato* v. *Khaja Muhammad Karim Nawab*, 4 Pat. L. J 297. *Vide* p. 71 *supra*

Where the rates of rent payable by tenants varied according to occupation and caste to which they belonged, one suit

under Section 106 of the Bengal Tenancy Act against all the tenants of a village in a body upon one plaint, with a court fee of Rs. 10 only for a declaration that the entry in the Records of Rights and *Furd Rewaz Bhowli* as regards the proprietor's share, is wrong. One suit is to be instituted against such of the tenants as belonged to the same caste or followed the same occupation and each such suit should be stamped with a Court Fee of Rs 10/-, *Dhakeswar Prosad* v. *Iswardhari*, 22 C.L J. 57.

Mortgages.—A mortgagee holding more than one mortgage against the same person and on the same property must sue on all of them, see *Ghose on Mortgage*, 4th Ed. pages 593 to 595. Where a mortgagee having several mortgages on the same property brought a suit on the prior mortgages and applied for sale of the property but not subject to the last mortgage which he held and had not sued upon. *Held*, that the suit is maintainable, *Govind Prosad* v. *Teknarain Mahto*, 38 Cal. 60: 14 C W. N. 1033 13 C L. J. 21 But in *Nilu Ray* v. *Asurbad Mondal*, 25 C. W N 129 33 C. L. J. 232 60 Ind. Cas 809, it has been held that such a mortgagee can sue on each of such independent mortgages on the same property although he cannot sell it twice over Where a mortgagee holds two mortgages on the same property the decree obtained by him in the first suit precludes any further lien upon the property brought to sale, *Atab Pramaniq* v *Arif Tarafdar*, 19 C. L. J. 590: 23 I. C 426.

Where a mortgagee holds two mortgages on the same property executed by the same person, he cannot maintain a suit to recover the sum due on the later mortgage, by sale of the property subject to prior mortgage as it would be a "splitting of claims" within the meaning of Sir Lawrence Jenkin's judgment in *Govind* v. *Pareshram*, (25 Bom. 161 2 Bom. L R. 864), which Section 43 C. P C was intended to prevent, *Keshavram* v. *Ranchhod*, 30 Bom. 156; 7 Bom. L. R. 811; *Dhonda* v. *Bhigaji*, 39 Bom. 138. See also *Dorasami* v. *Venkataseshayar*, 25 Mad. 108 (for a converse case to the above) modified in *Subramania* v. *Balasubramania*, 38 Mad. 927 F. B.; *Matabin Kasodem* v. *Kasim Husain*, 13 All 432; *Jogendranath* v. *Mohra*, 2 Pat. L. J. 118.

One suit on more mortgages than one against the same mortgagor by the same mortgagee does not come under Section 17 of the Court Fees Act. See *Thakur Jawahir Singh* v *Balwant Singh*, 7 O. C. 152; *Thakur Jawahir Singh* v. *Baldeo Prosad*, 11 O. C. 173. But the Patna High Court holds a different view. A suit upon two separate mortgage bonds embraces two distinct causes of action within the meaning of Section 17 of the Act; therefore, the amount of court fees payable on the plaint or memorandum of appeal in such suit is the

aggregate of *ad valorem* fees on each of the bonds, *Nawab Wazir Begum* v *Sashi Bhusan Ray*, 1 P. L T 414 57 Ind. Cas 685.

A person holding two mortgages from the same mortgagor hypothecating the same properties and even when the due dates in both are the same, can bring suits separately on both bonds; hence the mortgages are separate and distinct and not one under Section 17 of the Court Fees Act, *Nawab Wazir Begum* v. *Shashi Bhusan Ray*, 74 Ind Cas. 820 (1924) All I. R 77 (P)

Redemption and Arrears of rent.—If the suit be for redemption as well as for recovery of arrears of rent then there are really two distinct causes of action and the court fee is to be computed on arrears of rent and the principal amount of debt, *Rama Varmah Raja* v. *Kadar*, 16 Mad. 415 (418).

Partition and Accounts.—In a suit for partition and accounts, the plaint is to be stamped with Court Fees for partition plus *ad valorem* Court Fees on the approximate valuation for accounts *Beni Madhab Sankar* v *Gobind Chandra Sarkar*, 22 C W N 669 See also *Satis Chandra Ghosh* v *Kalidasi Dasi*, 26 C W N 177.

Possession and compensation.—Suit for possession of a house, and compensation in the nature of rent and like compensation from the date of the foreclosure to the date of delivery of possession, is a suit with distinct subject and court fees are payable on the aggregate amount of fees payable for the different claims, *Chedilal* v *Kirathchand*, 2 All. 682 F B.

Where a decree-holder-auction-purchaser obtained merely symbolical possession through court and then sued for partition and possession, held that the suit embraced two distinct causes of action and required to be stamped as a suit for partition and a suit for possession *Sitbaran Jha* v. *Lokenath Missir*, 3 Pat. 618, 80 I C 1052

Pre-emption—The right to pre-empt the sale in respect of more villages than one is one cause of action and consequently court fees are not leviable in respect of different villages, *Durga Prosad* v *Purandar Singh*, 27 All 186 24 All. W N. 210.

But if the plaintiff sues on an agreement to sell with an alternative claim for pre-emption of a mortgage of the same property the suit is within this Section 17 and therefore chargeable with court fees assessed on each alternative relief, *Hashmatunnissa Begum* v *Muhammad Abdulkarim*, 29 All 155 4 All. L. J. 127 27 All. W N 4 Where the plaintiff alleges a definite contract with him to sell a house and a right to pre-empt a subsequent sale of the same house, if such sale is not rendered nugatory by the previous agreement, *held*, that these are distinct causes of action and the court fees payable should

be the same as if separate suits had been filed, *Musst. Fatima Begum* v. *Mahomed Zakaria*, 96 P. R 1895.

Where the vendee in an appeal by him against a decree in favour of the pre-emptor on payment of Rs. 6800 asks for a decree restoring that to him or else requiring the successful pre-emptor to pay him an additional sum of Rs. 3200, these are two alternative reliefs based on exactly the same cause of action and only one of them can be granted They are not distinct subjects within the meaning of S. 17 of the Court Fees Act and the correct fee is one calculated not on the aggregate of two values but the higher of the two *Tek Chand* v. *Tara Chand*, 5 Lah. 114 ; 114 1924 A. I. R. 494 (Lah.).

Promissory Notes.—Where the suit is upon several promissory notes in favour of the same payee, the plaint is to be stamped with a fee amounting to the aggregate amount of Court Fees payable on a plaint for each of the sums as failure to satisfy each promissory note is a distinct cause of action, *In re P. L. R. M N. Perchiappa Chetty* v *Pokin*, 5 L B. R. 94 : 4 Ind. Cas 289.

Suits against principal Debtor and his Guarantor.—Where the plaintiff sues the principal debtor on a cash credit account and also in the same suit seeks decrees against persons who guaranteed the promissory notes and one equitable mortgage, *held*, that the plaint should be stamped with a court fee calculated on the various amounts claimed from each and all the guarantors separately as each note is a separate cause of action and the mortgage affords an entirely distinct cause of action, *In re Bank of Bengal* v. *R. M. L. Muthia Chetty*, F. B. 8 L. B. R. 219 8 Bur. L. T. 217 : 30 Ind. Cas. 705.

Suits for possession with claims for mesne profits.—Such suits are suits based on the same cause of action and therefore Section 17 of the Court Fees Act does not apply, *Kissory Lal Roy* v. *Sharut Chandra Mojoomdar*, 8 Cal 593 : 10 C. L. R. 359 , *Venkoba* v. *Subbanna*, 11 Mad. 151 ; *Reference under the Court Fees Act*, 16 All. 401 : 14 All. W. N. 124

Suit for possession, malikana and mesne profits—In suit for possession, malikana and *mesne* profits the court fees are not to be paid separately for each item but is payable on the total amount of the claim, *Nawratan Lal* v. *Wilford J. Stephenson*, 1922 (Pat C. W N. 79 · 4 P. L J. 195 : 50 Ind. Cas. 470.

But if the suit for possession with a claim for *mesne* profits is coupled with a claim for rent, the claim for rent is a distinct cause of action, but not in causes where the suit is against a tenant holding over after the tenancy has terminated, *In the*

matter of A. W. Zamal v. *Cyril Brown*, 36 Ind. Cas 883: 10 Bur. L. T. 60 8 L. B R 529.

In a suit for possession with a claim for malikhana as well as a claim for *mesne* profits, the plaintiff is entitled to add together the value of the three items of his claim for the purpose of assessing the court fees payable and need not assess it separately on each of the three items separately on the value of the land, separately on the malikana and separately on the amount of the *mesne* profits, *Nawratn Lal* v. *Stephenson*, 4 Pat. L. J. 195 50 Ind. Cas 470)

Suit against Railway Company.—A plaintiff who has sustained losses in respect of different consignments of different dates by reason of the negligence of a Railway Administration, can consolidate his claim and serve the Railway Administration with one notice in respect of all losses Where one notice is served there is only one cause of action and court fee is chargeable only on the consolidated amount of money claimed The aggragate amount of court fee calculated separately on each item, cannot be charged. *The East Indian Railway Co* v *Ahmadi Khan*, 1924 Pat C. W N. 175. 78 I C. 415 (1924) A I R 596 (P)

Suit for Specific Performance and for possession.—In as much as in a suit for specific performance of a contract of sale and for possession of the property agreed to be sold, the relief for specific performance is the main relief and is not ancillary to the claim for possession a separate court fee is, under Section 17 of the Court Fees Act, payable in such relief both in the original court and the court of appeal, *Ram Nidh* v *Balkaran Singh*, 60 Ind. Cas 654 23 O C 388, but see *Contra*, *Madan Singh* v *Gaja Prosad Singh*, 14 C L. J 159.

A suit for specific performance and possession does not comprise two distinct subjects *Sundara Ramanujam Naidu* v. *Sivalingam Pillai and others*, 45 M L J 431 1924 A I R. 360 (M) 47 Mad 150

Suit for several declarations—The plaint in a suit by reversioner for declaration regarding separate alienations by the widow, should be stamped with a court fee of Rs. 10 for each declaration, *Daivachilaya Pillai* v. *Pannathal*, 18 Mad 459. See also *Shambhu Diyal Singh* v *Iswar Saran*, (1923) A. I. R. 306 (Allahabad); *Balkaran Rai* v *Gobind Nath Tewari*, 12 All 129 (160)

Where a claimant, filing a claim under Section 278 (order 21 Rule 58) C P C and whose claim has been disallowed, filed a suit against judgment-creditor and judgment-debtor and prayed 1st for a declaration of his right to the property; 2nd for a declaration that judgment-creditor has no right to sell

the property in execution of the decree, held that in the plaint two substantial declarations have been prayed for, *Moti Singh* v *Kaunsilla*, 16 All. 308.

Suit for specific moveable property and for compensation.—The plaint in a suit by the present holder of a certificate of administration to the estate of a minor against another whose certificate of administration has been revoked and for delivery of specific moveable property or for compensation of non-delivery, need not be charged with court fees under Section 17 of the Court Fees Act as the suit did not embrace "distinct subjects" within the meaning of that section of the Court Fees Act on the total value of the claim, *Amar Nath* v. *Thakur Das*, 3 All. 131.

Maximum Limit.—The rule is that Section 17 of the Court Fees Act is subject to the proviso at the end of Art. 1 of the Court Fees Act and the maximum fee leviable is Rs 3,000 as indicated in the schedule, *Kashi Prosad Singh* v. *Secretary of State for India*, 29 Cal. 140; *Raghobir Singh* v. *Dharam Kuar*, 3 All. 108 F. B.

Written examinations of complainants

18. When the first or only examination of a person who complains of the offence of wrongful confinement, or of wrongful restraint, or of any offence other than an offence for which police-officers may arrest without a warrant, and who has not already presented a petition on which a fee has been levied under this Act, is reduced to writing under the provisions of the Code of Criminal Procedure, the complainant shall pay a fee of eight annas, unless the Court thinks fit to remit such payment.

NOTES.

Local Amendments.—Under the Court Fees Amendment Act, of Bengal (B C. Act IV of 1922), of Assam (Assam Act II of 1922); of Madras (Madras Act V of 1922), a *fee of one rupee* is substituted for *a fee of eight annas* for those provinces.

No stamp is necessary on petition of complaint made to

Magistrates of cognisable offences. *Bom. H. C. Cr. Ruling*, 4th April, 1873.

Exemption of certain documents.

19. Nothing contained in this Act shall render the following documents chargeable with any fee:—

i. Power-of-attorney to institute or defend a suit when executed by an officer, warrant-officer, non-commissioned officer, or private of His Majesty's army not in civil employment.

ii. [*Repealed by the Repealing and Amending Act, 1891 (XII of 1891).*]

iii. Written statements called for by the Court after the first hearing of a suit.

iv. [*Repealed by the Cantonments Act, 1889 (XIII of 1889).*]

v. Plaints in suits tried by Village Munsifs in the Presidency of Fort St. George.

vi. Plaints and processes in suits before District Panchayat in the same Presidency.

vii. Plaints in suits before Collectors under Madras Regulation XII of 1816.

viii. Probate of a will, letters of administration, [and, save as regards debts and securities, a certificate under Bombay Regulation VIII of 1827], where the amount or value of the property in respect of which the probate or letters or certificate shall be granted does not exceed one thousand rupees.

ix. Application or petition to a Collector or other officer making a settlement of land revenue, or to a Board of Revenue, or a Commissioner of Revenue, relating to matters connected with the assessment of land or the ascertainment of rights thereto or interests therein, if presented previous to final confirmation of such settlement.

x. Application relating to a supply for irrigation of water belonging to Government.

xi. Application for leave to extend cultivation, or to relinquish land, when presented to an officer of land revenue by a person holding under direct engagement with Government, land of which the revenue is settled, but not permanently.

xii. Application for service of notice of relinquishment of land or of enhancement of rent.

xiii. Written authority to an agent to distrain.

xiv. First application (other than a petition containing a criminal charge or information) for the summons of a witness or other person to attend, either to give evidence, or to produce a document, or in respect of the production or filing of an exhibit not be-

ing an affidavit made for the immediate purpose of being produced in Court.

xv. Bail-bonds in criminal cases, recognizances to prosecute or give evidence, and recognizances for personal appearance or otherwise.

xvi. Petition, application, charge, or information respecting any offence when presented, made, or laid to or before a police-officer, or to or before the Heads of Villages, or the Village-Police in the territories respectively subject to the Governors in Council of Madras and Bombay

xvii. Petition by a prisoner or other person in duress or under restraint of any Court or its officers.

xviii. Complaint of a public servant (as defined in the Indian Penal Code), a Municipal officer, or an officer or servant of a Railway Company.

xix. Application for permission to cut timber in Government forests, or otherwise relating to such forests.

xx. Application for the payment of money due by Government to the applicant.

xxi. Petition of appeal against chaukidari assessment under Act No. XX. of 1856, or against any Municipal tax.

xxii. Applications for compensation under any law for the time being in force

relating to the acquisition of property for public purposes.

xxiii. Petitions presented to the Special Commissioner appointed under Bengal Act No. II of 1869 (TO ASCERTAIN, REGULATE AND RECORD CERTAIN TENURES IN CHOTA NAGPUR).

xxiv. [Petitions under the Indian Christian Marriage Act, 1872, sections 45 and 48.]

NOTES.

Change in Law.—The words "and save as regards debts and securities, a certificate under Bombay Regulation VIII of 1827," in Clause VIII, have been substituted for the words "and certificates mentioned in the first schedule to this Act annexed, No 12" by Act VII of 1889, Section 13 (2).

The Clause XXIV was substituted for the original by the Indian Christian Marriage Act, XV of 1852, Section 2. The original ran as follows:—Petition under the fourteenth and fifteenth of Victoria, Chapter forty (An Act for the Marriages in India), Section 5 or under Act V of 1852, Section 9. The present Act is Act XV of 1872.

Local Amendment.—The words "one thousand rupees" in Clause VIII have been changed to "two thousand rupees" in Bengal and Assam by Local Amendment Acts of 1922.

Clause III. Written Statement.—Written statement filed by party at the first hearing of suit does not require court fees, *Cherag Ali* v. *Kadir Mahomed*, 12 C. L. R. 367.

Written statement of his case, tendered by party to a suit at any time before or at the first hearing of the suit, is not liable to any court fee, and may be written on a plain paper and a written statement called for by the court after first hearing is also exempt from duty, *Nagu* v. *Yeknath*, 5 Bom. 400. But a written statement containing a plea of set-off must be stamped *ad-valorem*, *J. J. Guise* v. *Anantha Rama Rathi*, 10 C. W. N. 199 See the cases under Schedule 1 Art. 1 of the Court Fees Act under "set-off."

There is nothing in the law which requires a defendant in a partition suit to pay Court Fees in order to have his share

separately allotted to him ; he has merely to ask for it in his written statement, and it is open to the Court to order the shares of the defendants in a partition suit to be separated as among themselves, *Hem Chandra Mahto* v. *Prem Mahto*, 7 P L T 295 (299).

Clause VIII.—No duty is payable in respect of a grant of probate or Letters of Administration where the value of the estate, after making the deductions specified in Annexure B of the 3rd schedule, is less than Rs. 1,000. *In the goods of Mrs E E. W. Meik*, 40 All. 279 : 46 Ind. Cas. 865.

Clause XVII.—Petition of appeal presented by pleader on behalf of a prisoner need not be stamped with court fees, *Emperor* v. *Maruti Teli*, 14 N. L. R. 77 : 45 Ind. Cas 158. See *In re Court Fees Act*, 1924 A. I. R. 160 (R) See *Kali Prosad Banerjee* v. *Gisborne and Co.*, 10 Cal. 61 : 13 C. L R. 156, where it was held that a memorandum of appeal by a judgment-debtor in custody under Ch. XX C. P. C. (Act XIV of 1882) need not bear stamp.

Application for bail signed by the advocate is an application by the prisoner himself and comes under Section 19, Clause XVII. and is not required to be stamped, *Jagannath Kahar* v *Emperor*, 4 U. B. R. 27 : 65 Ind. Cas. 553 : (1922) A I R 14 (Upper Burma).

Clause XVIII.—No fee is leviable on complaints made by Municipal officers, *Queen Empress* v. *Khajabhoy*, 16 Mad. 423

A complaint by a Munsiff, though it does not bear the seal of the Munsiff's Court, need not be on stamped paper, *Reg* v *Sajjan Valad*, 5 Bom. H. C. (Cr. Ca.) 104.

Clause XX.—An application for refund of costs deposited in Privy Council appeal, is to be stamped with a court fee of two rupees *Haridasi Debi* v. *Gopeswar Pyne and others*, 27 C W N 646 ; (1923) A. I. R. 599 (Cal.).

Clause XXI.—Application for compensation under the Land Acquisition Act need not be stamped. *Indian Gazette, dated the 26th February, 1870.*

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CHAPTER IIIA.

PROBATES, LETTERS OF ADMINISTRATION, AND CERTIFICATES OF ADMINISTRATION.

Relief where too high a court-fee has been paid.

19A. Where any person, on applying for the Probate of a will or Letters of Administration, has estimated the property of the deceased to be of greater value than the same has afterwards proved to be, and has consequently paid too high a court fee thereon, if, within six months after the true value of the property has been ascertained, such person produces the probate or letters to the Chief Controlling Revenue Authority [for the local area] in which the probate or letters has or have been granted.

and delivers to such Authority a particular inventory and valuation of the property of the deceased, verified by affidavit or affirmation,

and if such Authority is satisfied that a greater fee was paid on the probate or letters than the law required,

the said Authority may—

(*a*) cancel the stamp on the probate or letters, if such stamp has not been already cancelled;

(*b*) substitute another stamp for denoting the court-fee which should have been paid thereon; and

(*c*) make an allowance for the difference between them as in the case of

spoiled stamps, or repay the same in money, at his discretion.

NOTES.

Change in law.—Chapter IIIA was inserted by the Probate and Administration Act, 1875 (13 of 1875)

The words "for the local area" were substituted for the words "of the Province" by Section 3 (1) of the Court Fees (Amendment) Act, 1901 (10 of 1901).

Application—The provisions of Chapter III of the Court Fees Act, 1870, does not apply to Probate. *In the matter of the Last Will and Testament of Ram Chandra Lakshmanji*, 1 Bom. 118 (121).

Until the Court Fee is paid and grant is issued to the party there is no grant of Probate, *Alamelamall* v. *P. N. K. Surya Prokasaroya Mudaliar*, 38 Mad. 988 ; 29 M. L. J. 680.

"The sum charged upon a grant of Probate or of Letters of Administration, is not a tax or duty levied upon the property upon which the Probate or Administration operates, and it is not charged thereon as is Estate Duty in England, but it is merely a fee levied by the Court issuing the Probate or Letters of Administration for the work done in this connection. And I do not think that this is any less the case because the fee is levied upon the value of the property." *In re the Goods of George Thomas Williams*, 27 C. W. N. 812: (1924) All. I. R. 115 (Cal)

Relief where debts due from a deceased person have been paid out of his estate

19B. Whenever it is proved to the satisfaction of such Authority that an executor or administrator has paid debts due from the deceased to such an amount as being deducted out of the amount or value of the estate, reduces the same to a sum which, if it had been the whole gross amount or value of the estate, would have occasioned a less court-fee to be paid on the probate or letters of administration granted in respect of such estate than has been actually paid thereon under this Act,

such Authority may return the difference, provided the same be claimed within three years after the date of such probate or letters.

But when, by reason of any legal proceeding, the debts due from the deceased have not been ascertained and paid, or his effects have not been recovered and made available, and in consequence thereof the executor or administrator is prevented from claiming the return of such difference within the said term of three years, the said Authority may allow such further time for making the claim as may appear to be reasonable under the circumstances.

NOTES.

As for cases when the incumbrances are to be deducted. See *In Re. Will of Ram Chandra Laksmanji*, 1 Bom. 118; *In the goods of Charles Edward Maclean*, 6 N W. P. 214; *In re the goods of Peter Innes*, 8 B L. R. Ap. 43: 16 W. R. 253.

Payment of debts.—Debts due by the deceased are not to be deducted in the first instance, *In the goods of Ram Chandra Das*, 9 B. L. R. O. C 30: 18 W. R. 153.

19C. Whenever a grant of probate or letters of administration has been or is made in respect of the whole of the property belonging to an estate, and the full fee chargeable under this Act has been or is paid thereon, no fee shall be chargeable under the same Act when a like grant is made in respect of the whole or any part of the same property belonging to the same estate.

Relief in case of several grants

Whenever such a grant has been or is made in respect of any property forming part of an estate,

the amount of fees then actually paid under this Act shall be deducted when a like grant is made in respect of property belonging to the same estate, identical with or including the property to which the former grant relates.

Change in law.—The word "such" following the word "whenever" is omitted having been repealed by Act. XII of 1891, Schedule 1.

As to the amount of duty payable, see also Schedule I Art II of the Court Fees Act.

Application.—This section does not apply to the estate of a deceased person in respect of which no fees have yet been paid in India under the Succession Act, *In re Murch*, 4 Cal. 725 (726) ; *In the goods of Gladstone*, 1 Cal. 168.

Applies only to properties situate in British India.—"Where London is the locality in which the business which is the property of the firm is situate" no probate duty is payable on the death of the partner, on the assets of the firm in India as "there is no capital account in Bombay at all and that the Bombay business is not a distinct business from London business" *In the goods of Sir Albert A. D. Sassoon*, 21 Bom. 673. But where a part is situate in British India and part outside, court fee is payable in respect of property within British India although some property may have been brought into British India after the death of the testator, the test of liability being the locality of assets *at the time of testator's death. In re Ezekiel Joshua Abraham*, 21 Bom. 139

Probate duty is payable in respect of property within the jurisdiction of the court at the time of the application for probate. Therefore when the testator left properties which are not saleable or transferable unless they have been transferred to the executor or trustee in the Bank of England, *held*, that such securities are not assets in India and no duty is leviable thereon. *In the goods of Major-General Millet*, 51 P. R 1902.

Valuation.—See also under Art. 11 Schedule 1 of the Court Fees Act, the word "property" is explained in, *In the goods of T. H Maddock*, 15 W. R. 456 : 7 B. L. R. 57, to mean not only the property which the deceased was beneficially entitled in his life-time but also property standing in his name as trustee

When letters of administration are granted in [illegible] property which is subject to mortgage, the value of [illegible]

is the value of the property less the amount of encumbrance, *In the goods of Peter Innes*, 16 W. R. 253: 8 B. L. R. Ap. 43; *In the goods of Charles Edward Maclean*, (1874) 6 N. W. P. 214; but see *contra*, *In the goods of Ram Chandra Das*, 18 W. R 153: 9 B. L R. 30.

Annuity.—The valuation in the case of an annuity is its market value and not ten times the annual payment. *In the matter of last Will and Testament of Ramchandra Lakshmanji*, 1 Bom. 118

Where the estate is subject to the payment of an annuity for life to a person who survived the testator, the fee payable is on the value of the property less the capitalized value of the annuity. *In the goods of Rushton*, 3 Cal. 737: 2 C. L. R. 43; *In the goods of Peter Innes*, 8 B. L. R. App. 43: 16 W. R. 253.

Mortgage.—The word "value" means market value and the market value of a mortgaged property is the equity of redemption If, after filing of accounts it is found that sufficient stamp duty has not been paid, payment of any deficiency may be enforced *In the goods of Charles Edward Maclean*, 6 N. W. P. 214

Partnership.—"A deceased partner has (in the absence of special agreement) no share in the properties of the firm as such. It is his interest in the firm which is the asset which is assessable to probate duty." *In the goods of A. D Sassoon*, 21 Bom. 673 (678)

Shares.—In case of shares the court fees are chargeable on the value prevailing on the date of application for probate and subsequent changes do not alter the amount of court fees payable. *In the matter of A. C. Macmillan*, 5 Bur. L. T. 39: 14 Ind. Cas. 804.

Properties Subject to Litigation—Properties which are subject matter of litigation and which have not come into the possession of the deceased, were allowed to be valued at less than Rs 1,000, but the parties were ordered to file statements in court showing the result of litigation. *Seldanha* v. *Secretary of State for State for India in Council*, 24 Mad. 241.

There is no provision in the Court Fees Act, 1870, authorizing exemption in respect of an entire claim or a portion of it supposed to be doubtful. *Edward Lane Beake*, 21 W. R. 297: 13 B. L. R. A. C 24; *In the Goods of Abdul Aziz*, 23 Cal. 577; *In the goods of Ram Chandra Ghose*, 24 Cal. 567 (case of a judgment-debt).

But desperate and doubtful debts need not be included in the list in the first instance, but if they afterwards form part

of the estate, court fees on the same may be recovered ; *Moses v Crofter*, 4 C and P 524 approved in *A. G. v. Brunning*, 8 H L Case 243 (62).

See also Halsbury's Laws of England Vol. 13, pages 312-314 as to the method of valuing the property and deductions that can be made from that valuation.

Proof of Valuation.—See Schedule III and annexures A. & B of the Court Fees Act.

Proof of valuation is by affidavit but this valuation is inspected and inquired into by Revenue authorities under Section 19 H. of the Court Fees Act. But the Administrator-General is exempted from verifying the affidavit. *In the goods of McComiskey*, 20 Cal 879, *In the goods of P. J. Advall*, 26 Cal. 404 3 C. W. N. 298

The valuation is now checked by the Collector under authority conferred by Resolution No. 980 S. R. dated 10th February, 1902 (Calcutta).

No Double Duty Payable.—No fresh court fees payable in the 2nd grant *In the goods of Lt.-General Peter Innes deceased*, 16 W. R. 253 : 8 B. L. R. Ap. 42. *The Deputy Commissioner of Singhbhum v. Jagadish Chandra Dhobal Deo*, 6 Pat. L J. 411 : 62 Ind. Cas. 513, *although the rate may have increased in the meantime.*

When an executor to whom probate has been granted, leaving a part of the testator's estate unadministered, and a new representative is appointed for the purpose of completing the administratio, no new succession duty should be levied as there is no new succession and no devolution of the estate. Full fee is chargeable under the Court Fees Act on probate where it is first granted and no further fee shall be chargeable when no second grant is made in respect of the same property as comprised in the estate and court cannot ask the applicant in the second application even to pay the difference between the old rate of duty payable and the new rate, the rate having been increased in the interval. An order calling upon the party to pay the difference amounts to a refusal to grant probate and an appeal lies under section 86 of the Probate and Administration Act, *Swarnamoyee Devi v Secretary of State for India in Council*, 43 Cal. 625 : 22 C. L. J. 370 : 20 C. W. N. 472 : 30 Ind. Cas. 394, see also *In the goods of Julia Oram*, 21 W. R. 245 : 12 B L R. Ap 21; *In the goods of Bibee Ameerum*, 15 W. R. 496

Grant in favour of some executors—grant de bonis non.—By Section 19C, provided that the full fee chargeable under the Act has been paid, no further fee is to be chargeable when a

grant, i.e. a grant of probate or letters of administration, is made in respect of the whole or any part of the same property belonging to the same estate. There is nothing in the wording of Section 19B to confine its application to the case of some executors coming in to take out after one of their number has already taken out probate. It will apply equally to a subsequent applicant for the administration of the whole estate and an application to administer that which has been unadministered so far When the appointment is made *de bonis non* there is no new succession, no new devolution of the estate, which would justify a finding that fresh court fees must be paid. *In the matter of the estate and effects of Maung Win Pan deceased*, and *In the matter of the estate and effects of Haeo Wah Kin deceased* I L. R. 3 Rangoon 90 (92); 1925 A. I. R. 217 (Rangoon).

Although the value of the property must have increased in the meantime. No fresh court fees are payable, although the value of the property may have increased in the meantime. See *Samuel Balthazer, Petitioner*, 4 L. B R. 255; *In the goods of W P Mosson*, 6 B. L. R. App. 139 (copy of the exemplication of probate of the will annexed and of the document produced in lieu of the former Letters of Administration).

But Fresh Court Fees are Payable for a Fresh Devolution. —The estate mentioned in Section 19C., means property of the deceased person. Section 19C. implies that, where court fees have already been paid by some previous executor or administrator in respect of the whole or part of the property comprised in the estate of the deceased person and a fresh grant of probate or letters of administration is necessary, no fresh fees should be charged for such grant; but where a husband applies for probate of his wife's will, most of the property devised by which was included in her father's will, the husband must pay the full court fee, even though full court fees have already been paid for probate of the father's will. *Bhagawati Saran Sighn v. Secretary of State for India in Council*, 5 Pat L J 36: 54 Ind. Cas. 703: 1920 (Pat) C. W. N. 81.

But second fees were payable, as at the time of the second grant, the Court Fees Act, 1870, had come into force. *In the Goods of George*, 6 B. L. R. App 138; *In the goods of W. G. Chalmers*, 6 B. L. R. App. 137: 21 W. R. 246.

Annulling Grant.—The duty paid on former Letters of Administration which was afterwards cancelled, was allowed to be deducted from the amount payable for fresh Letters of Administration. *In the goods of Peter Innes*, 16 W. R. 253: 8 B. L. R. Ap. 43.

Where an application is filed that the grant be annulled under Section 234 explanation 4 of Act X of 1865 in order that a fresh grant might be applied for, the latter will be exempt from further court fees under Section 19 (C) of the Court Fees Act, 1870 *Application by Elizabeth A Desouza for probate of will of Alfred Jones Desouza under Act X of 1865*, 1 S. L. R. 177

Power of Appointment.—No fresh court fees are payable in respect of any property where a person having a life interest in a fund with a general and absolute power of appointment thereover, exercises such power by will. *In the goods of Julia Oram*, 21 W R 245: 12 B. L. R. Ap. 21; *In the goods of George*, 6 B R R. Ap. 138.

But in the case of *In re Lakshminarayana*, 25 Mad. 515, such power of appointment by wife was held to be property within the meaning of Art 11, Schedule I of the Court Fees Act and the property in respect of which such power of appointment was exercised was held to be liable to probate duty a second time.

Probates declared valid as to trust-property, though not covered by court-fee.

19D. The probate of the will, or the letters of administration of the effects, of any person deceased, heretofore or hereafter granted, shall be deemed valid and available by his executors or administrators for recovering, transferring, or assigning any moveable or immoveable property whereof or whereto, the deceased was possessed or entitled, either wholly or partially, as a trustee, notwithstanding the amount or value of such property is not included in the amount or value of the estate in respect of which a court-fee was paid on such probate or letters of administration.

NOTES.

See Notification No. 4650, dated 10th September, 1889, in the Appendix.

Trust property descending on the death of the trustee is liable to *ad valorem* court fee duty. *In the goods of Beresford*, 15 W R. 456: 7 B L R. 57.

The deceased, a German subject, married a lady in Rhenish Prussia where Code Napolean prevails, and under that law the husband and wife have equal interest in the properties and on the death of one of them, the one half goes to the heirs and the other half to the survivor. Hence on the death of the deceased only one half of the property was held liable to stamp duty *In the goods of Froeschman*, 20 Cal. 575.

Dayabhaga.—Where two brothers governed by Dayabhaga law of inheritance died unmarried leaving the other brother as heir who applied for Letters of Administration of the property and credits of the deceased consisting of (1) moneys in Government Bank, (2) Government securities standing in the name of the deceased, (3) family dwelling house *Held*, that the court fees are payable on the share of the deceased brother, but the surviving brother's share was to be treated as trust property in his hands and therefore exempt from duty. *In the goods of Brindaban Ghose*, 19 W R 239, 11 B L R. Ap 39.

Where a Hindu daughter died possessed of her father's property and also some Government Promissary Notes standing in his own name *Held* that no duty is payable in respect of these properties. *In the goods of Joymoney Dassi*, 14 B L. R. 184

Survivorship in Mitakshara.—Where property was purchased by four brothers as members of joint Hindu family and with joint funds and one of them subsequently died leaving a will, and the serviving brothers applied for probate as executors and trustees under the will notwithstanding that it was bequeathed to them as tenants in common. *Held* that it was not liable to probate duty *In the goods of Pokhurmull Agarwala*, 23 Cal. 980 · 1 C W. N 31.

The above case was followed in the case of *Collector of Khaira* v *Chunni Lall*, 29 Bom. 161, 6 Bom. L. R. 652, where it was held that the grant of Letters of Administration is exempted from stamp duty and that exemption of trust estate does not depend upon the condition whether there had been a previous grant or not; the exemption has reference to the character of the property and not to the procedure adopted. But a contrary rule was laid down in *In the matter of Datu Manavale Chetty*, 33 Mad 93: 19 M. L. J. 591: 6 M L. T. 286; 4 Ind. Cas. 1064, where the decisions reported in 23 Cal. 980, and 29 Bom. 161, were not followed on the ground that in these decisions, the effect of the words "not beneficially or with general power to confer a beneficial interest," following the words "property held in trust" in Annexure B, were not considered.

Also where one member of a joint Hindu family died leaving a will by which his share in the joint family property was disposed of, *held* that the whole property was liable to probate duty, in as much as the parties claiming under the will could not go behind its terms or claim any exemption whatever upon allegation inconsistent with the will or its provisions. *Kashinath Parashram* v. *Gourabai Mullappa Warad*, 17 Bom L R. 169: 39 Bom 245 28 Ind Cas 473 but the case of *Kashinath* v. *Gourabai* was not followed in *Keshavlal* v. *Collector of Ahmedabad*, 48 Bom 75 (1924) A I R 228 (Bom): 25 Bom. L R 1240, 77 Ind Cas 749 See also *Re Estate of Ram Kumar Prasad*, 5 Pat L J. 510. 58 Ind Cas 1007. 1 Pat L T 710 See also *In re Bhubaneswar Trigunait*, (the case reported in 29 C W. N. 372 having been reversed by the appeal Court) in 52 Cal 871, 29 C W. N 879; 95 I. C. 529; 1925 A I R 1201 (Cal) where a Hindu father and his brother lived together in a joint Mitakshara family and on the death of the father intestate leaving certain money in a Bank, the Letter of Administration granted to the sons was exempted from stamp duty

Property held in Trust—Means property of which the testator was a trustee, not that of which he has created a trust. *The Deputy Commissioner of Singbhum* v. *Jagadish Deo Dhabal*, 6 Pat L J 411 62 Ind. Cas. 513.

Shares—A share in the Bank, for the purpose of devolution or survivorship, must be deemed so far as the bank was concerned, the exclusive property of its registered holder. Therefore when that shareholder dies, a probate or letters of administration is necessary as a claim by survivorship cannot prevail. *Bank of Bombay* v *Ambalal Sarabhai*, 24 Bom. 350: 2 Bom. L. R. 467.

Refund.—A Mitakshara father died leaving two sons who were joint with him and to whom the property passed by survivorship The deceased had, before his death, deposited with two banks a sum of Rs 5,000 each (property of the joint estate), who refused to hand over the money to the sons unless they take out Letters of Administration with respect to the same; consequently Letters of Administration were obtained and the duty paid. Subsequently the sons filed an application for refund of the duty paid as the property in respect of which it was paid was joint family property; *held*, that no refund could be granted duty has been previously paid. *Collector of A*! . *Savchand Ladukchand*, 27 Bom. 140: 4 Bom. L. R.

Provisions for case where too low a court-fee has been paid on probate, &c

19E. Where any person, on applying for probate or letters of administration, has estimated the estate of the deceased to be of less value than the same has afterwards proved to be, and has in consequence paid too low a court-fee thereon, the Chief Controlling Revenue-authority [for the local area] in which the probate or letters has or have been granted, may, on the value of the estate of the deceased being verified by affidavit or affirmation, cause the probate or letters of *administration to be duly stamped on payment of* the full court-fee which ought to have been originally paid thereon in respect of such value, and of the further penalty, if the probate or letters is or are produced within one year from the date of the grant, of five times, or, if it or they is or are produced after one year from such date, of twenty times, such proper court-fee without any deduction of the court-fee originally paid on such probate or letters:

Provided that, if the application be made within six months after the ascertainment of the true value of the estate and the discovery that too low a court-fee was at first paid on the probate or letters, and if the said Authority is satisfied that such fee was paid in consequence of a mistake or of its not being known at the time that some particular part of the estate belonged to the deceased, and without any intention of fraud or to delay the payment of the proper court-fee, the said Authority may remit the said penalty, and cause the probate

or letters to be duly stamped on payment only of the sum wanting to make up the fee which should have been at first paid thereon.

NOTES.

Change in Law.—The words "for the local area" were substituted for the words "of the Province" by the Repealing and Amending Act (Act X of 1901), Section 3 (1).

Power of Chief Controlling Revenue Authority.—As to the powers of Chief Controlling Revenue Authority to remit the whole or part of any penalty or forfeiture imposed under this section, see Section 20 of the Probate and Administration Act, (Act VI of 1889).

Manner of Collection.—See I. G. Notification No. 1522, dated the 10th March, 1885, in the Appendix.

Rights of Secretary of State.—The Secretary of State has the right to sue for recovery of penalty imposed by Revenue authority under statutory powers, but these powers must be exercised in conformity with the statute. Section 19E of the Court Fees Act contemplates an application on the part of the person who has taken out probate and produces the same to be duly stamped. It further contemplates that when the estimated value of the estate is less than what the value afterwards proved to be, a civil court cannot revise the valuation of a Revenue officer unless the same is *ultra vires* or not in accordance with law *Nikunja Rani Chowdhurani* v. *Secretary of State for India*, 43, Cal. 230: 20 C. W. N. 504: 22 C. L. J. 875 31 Ind. Cas 460 Section 19E contemplates an application by a person who has taken out probate and produces the same to be duly stamped. *Manekji* v. *Secretary of State of India in Council*, (1896) P. J. Bom. 751.

Administrator to give proper security before letters stamped under Section 19E.

19F. In the case of letters of administration on which too low a court-fee has been paid at first, the said Authority shall not cause the same to be duly stamped in manner aforesaid, until the administrator has given such security to the court by which the letters of administrati... have been granted as ought by law, to have

given on the granting thereof in case the full value of the estate of the deceased had been then ascertained.

Executors, &c, not paying full court-fee on probates, &c, within six months after discovery of under-payment

19G. Where too low a court-fee has been paid on any probate or letters of administration in consequence of any mistake, or of its not being known at the time that some particular part of the estate belonged to the deceased, if any executor or administrator acting under such probate or letters does not, within six months * * * after the discovery of the mistake, or of any effects not known at the time to have belonged to the deceased, apply to the said Authority, and pay what is wanting to make up the court-fee which ought to have been paid at first on such probate or letters, he shall forfeit the sum of one thousand rupees, and also a further sum at the rate of ten rupees per cent. on the amount of the sum wanting to make up the proper court-fee.

NOTES.

Change in law.—The words and figures "after the 1st day of April, 1875, or" are repealed by the Repealing and Amending Act (Act X of 1901), Schedule I.

Frame of Section—Section 19G is moulded on section 43 of 55 George III C. 184 and section 122 of 56 George III C. 56. *Nikunja Rani* v. *Secretary of State for India in Council*, 43 Cal 230; 22 C. L. J. 375; 20 C. W. N. 504; 31 Ind. Cas. 460.

For the protection of revenue, however, Section 19G provides a penalty. The duty of determining whether too low a court fee is paid is imposed on Revenue authorities and the civil court has no power of reviewing his decision and ordering penalty to be repaid if such decision by Revenue authority

happens to be wrong *Manecji Edalji v The Secretary of State for India in Council,* (1896) Bom P J 751.

19H. (1) Where an application for probate or letters of administration is made to any court other than a High Court, the court shall cause notice of the application to be given to the collector.

Notice of applications for probates or letters of administration to be given to Revenue authorities, and procedure thereon

(2) Where such an application as aforesaid is made to a High Court, the High Court shall cause notice of the application to be given to the Chief Controlling Revenue-Authority [for the local area in which the High Court is situated.]

(3) The Collector, within the local limits of whose revenue-jurisdiction the property of the deceased or any part thereof is, may at any time inspect or cause to be inspected, and take, or cause to be taken, copies of the record of any case in which application for probate or letters of administration has been made; and if, on such inspection or otherwise, he is of opinion that the petitioner has under-estimated the value of the property of the deceased, the Collector may, if he thinks fit, require the attendance of the petitioner (either in person or by agent), and take evidence, and inquire into the matter in such manner as he may think fit, and, if he is still of opinion that the value of the property has been under-estimated, may require the petitioner to amend the valuation.

(4) If the petitioner does not amend the valuation to the satisfaction of the Collector, the Collector may move the court before which the applica

tion for probate or letters of administration was made to hold an inquiry into the true value of the property:

Provided that no such motion shall be made after the expiration of six months from the date of the exhibition of the inventory required by section 277 of the Indian Succession Act, 1865, or as the case may be, by section 98 of the Probate and Administration Act, 1881.

(5) The Court, when so moved as aforesaid, shall hold, or cause to be held, an inquiry accordingly, and shall record a finding as to the true value, as near as may be, at which the property of the deceased should have been estimated. The Collector shall be deemed to be a party to the inquiry.

(6) For the purposes of any such inquiry, the court or person authorized by the court to hold the inquiry, may examine the petitioner for probate or letters of administration on oath (whether in person or by commission), and may take such further evidence as may be produced to prove the true value of the property. The person authorized as aforesaid to hold the inquiry shall return to the court the evidence taken by him, and report the result of the inquiry, and such report and the evidence so taken shall be evidence in the proceeding, and the court may record a finding in accordance with the report, unless it is satisfied that it is erroneous.

(7) The finding of the court recorded under sub-section (5) shall be final, but shall not bar the

entertainment and disposal by the Chief Controlling Revenue-authority of any application under section 19E.

(8) The Local Government may make rules for the guidance of Collectors in the exercise of the powers conferred by sub-section (3).

NOTES.

Change in law.—The words "for the local area in which the High Court is situated" were substituted for the words "of the Province" by section 3 (2) of the Court Fees (Amendment) Act, 1901 (10 of 1901).

Sections 19H, 19I, 19J, 19K were inserted by the Court Fees Amendment Act, 1899 (Act XI of 1899) Section 2.

Procedure in moving for an enquiry.—In moving the court for an enquiry into the true value of the assets of deceased person under 19H of the Court Fees Act, it is not enough for the Collector simply to make an application for enquiry, he should place before the court materials showing that an enquiry was needed, *i e.*, he should make out a case for enquiry upon definite facts. The Act does not specify in what way or by whom the expense of inquiry should be met. It would be the duty of the Court, if possible, and if the circumstances permit, to hold the inquiry itself and so save further expense to the parties *In the Goods of J. R. A. Stevenson*, 6 C. W. N. 898.

"By section 19H, notice of every application for probate or Letters of Administration has to be given to the chief Controlling Revenue Authority and measure provided whereby the revenue authorities may check valuations and recover proper court fees" *In re Bhubaneswar Trigunait*, 52 Cal. 871; 29 C W. N. 879; 95 I. C. 529; 1925 A. I. R. 1101 (Cal.).

Review—Where in an enquiry under Section 19H of the Court Fees Act the Government Pleader was not ready to go on with the case on the date fixed and the court dismissed the enquiry on the ground of negligence, but afterwards granted a review "for other sufficient reason" and reopened the case, held, that the grant of review was bad. *Bindu Basini Raychowdhurani* v. *Secretary of State for India in Council*, 51 Cal. 20

Limitation.—Where after the issue of letters

Administration with a copy of the will annexed, the applicant for the same filed a list of immoveable properties on 13th May, 1905, belonging to the estate of the deceased and then filed a list of movable properties on 17th August, 1905, but no document which may be said to contain under section 98 of the Probate and Letters of Administration Act, a full and true *estimate of the properties of the deceased ; and after several* attempts by the Collector to obtain the inventories, on 16th July, 1908, the Collector applied under 19H cl. (4) of this Act to the District Judge to enquire into the true valuation of the estate Held, by the Judicial Committee of the Privy Council that the period of six months mentioned in cl. (4) is to run from the lodging of the inventory required by the statute and that no inventory having been filed which satisfied the statutory requirements, namely, "a full and true estimate of all the property in possession," the application by the Collector was not barred under cl. (4) of section 19H of the Court Fees Act (The decision does not say that a single document containing a full and true estimate is to be filed). *Rajkumari Bhubaneswari* v *The Collector of Gaya*, P. C. 41 Cal 556 18 C W. N 153: 19 C. L. J. 136: 21 Ind. Cas. 915. 12 A L. J 69 16 Bom L. R. 95: 1914 M. W. N. 13: 26 M L. J 5: 15 M L. T. 87

Costs of enquiry—A court has no power to award costs in a proceeding under Section 19H of the Court Fees Act, for ascertaining the valuation of properties in respect of which Letters of Administration have been granted. There is no provision for the realisation of any costs which may be incurred in connection with such an enquiry. *Hridoy Mohini Dasi* v. *Secretary of State for India in Council*, 50 Cal. 229, 27 Ind. Cas 472· 1923 All. I. R. 406 (Calcutta).

Finding by District Judge Final.—Where an applicant for probate refuses to amend the valuation of the estate to the satisfaction of the collector, and latter applied to the District Judge asking that an enquiry be made into the true valuation of the property, the finding of the District Judge as to the value of the property under Sub-section (5) of Section 19H of the Court Fees Act, is final and no appeal lies against it by virtue of the provisions contained in sub-section (7) of that section, but the refusal by the District Judge to consider the allegations of the applicant that other properties have been erroneously included may be revised, *Chinmatha Nath Pal Chowdhury* v. *Secretary of State for India in Council*, 78 I. C. 901 ; 1925 A. I. R. 357 (Calcutta).

19 I. (1) No order entitling the petitioner to the grant of probate or letters of administration shall be made upon an application for such grant until the petitioner has filed in the court a valuation of the property in the form set forth in the third schedule, and the court is satisfied that the fee mentioned in No. 11 of the first schedule has been paid on such valuation.

Payment of court-fees in respect of probates and letters of administration

(2) The grant of probate or letters of administration shall not be delayed by reason of any motion made by the collector under section 19H, sub-section (4)

NOTES

This section prohibits an order by court entitling a petitioner to a grant of Probate or Letters of Administration until the petitioner has filed in Court a valuation of the property in the form set out in the 3rd Schedule of the Court Fees Act and the Court is satisfied that proper fees have been paid on such valuation *Maung Ye Gyan v Ma Hme*, 1 L. B. R. 228.

Administration for a part of the property.—The court fees payable for the issue of Letters of Administration in respect of part of the property is to be calculated on the value of the part and not on the value of the entire property. *Gurbachan Kaur v. Satwant Kaur and others*, 1925 A I R. 493 (Lah.)

(2) —The grant of a probate to the petitioner, after she has filed the valuation in accordance with section 19H (1) of the Court Fees Act and paid proper court fees, cannot be delayed simply because Collector has failed to move under section 19H (4) of the Court Fees Act. *In Re Srimoti Prasanna Moyee Basu, widow of Kritanta Kumar Bose*, 40 Ind. Cas. 576.

Section 19 I contemplates the prepayment of duty before an order for grant of probate is made. *Nikunja Rani* v. *Secretary of State for India*, 43 Cal. 230: 20 C. W. N. 504: 22 C L J 375 30 Ind. Cas. 460 *Swarnamoyee* v. *The Secretary of State for India*, 43 Cal. 625: 23 C. W. N. 472: 22 C L J 370

"The court is not required to satisfy itself that the valua-

tion is correct but only that the fee mentioned in No. 11 of the First Schedule has been paid on such valuation. *In re Bhubaneswari Trigunait*, 52 Cal 871 ; 29 C. W N. 879 (882).

Effect of Amendment—Where an application for probate was made on the 29th March, 1922, and on 30th March, 1922, the estate was valued and the court fees paid, but the Will was proved on the 8th April, 1922 after Amending Act has come into force, held that the court fees were correctly paid under the old law and the Amending Act does not apply as the fee payable had been paid before the Amending Act came into operation. *Thaddeus Nahapiet* v. *The Secretary of State for India*, 39 C. L J. 209.

Undertaking by Counsel.—Section 191 (1) of the Court Fees Act is no bar to the hearing of an application previous to deposit of the court fees, when counsel for the petitioner expresses his willingness to pay any court fees which may be found due, once it is decided that the application for the grant of administration be accepted. *Deputy Commissioner of Lucknow* v *Taj Kishen*, 8 Ind. Cas. 695.

Recovery of penalties

19J. (1) Any excess fee found to be payable on an inquiry held under section 19H, sub-section (6), and any penalty or forfeiture under section 19G may, on the certificate of the Chief Controlling Revenue-Authority, be recovered from the executor or administrator as if it were an arrear of land-revenue by any collector in any part of British India.

(2) The Chief Controlling Revenue-Authority may remit the whole or any part of any such penalty or forfeiture as aforesaid, or any part of any penalty under section 19E, or of any court-fee under section 19E, in excess of the full court-fee which ought to have been paid.

NOTES.

The Collector cannot, without moving the court for an enquiry under section 19H into the true value of the assets, impose a penalty upon the applicant. *Nikunja Rani*

Chowdhurani v. *Secretary of State for India*, 20 C. W. N. 504: 43 Cal 230: 22 C. L. J 375; 31 Ind Cas. 460.

Sections 6 and 28 not to apply to probates or letters of administration.

19K. Nothing in section 6 or section 28 shall apply to probates or letters of administration.

NOTES

Section 19 (VIII) and Art 11 of Schedule 1 of the Court Fees Act exempt from liability to fees Probate or Letters of Administration where the amount or the value of the property, in respect of which the grant is made, does not exceed one thousand rupees This exemption, however, applies only to cases where the gross value of the property does not exceed one thousand The fee mentioned in No 11 of Schedule 1 is to be paid on the valuation mentioned in Schedule III and is to be paid on the net value of the property where the gross value is above and the net value is below one thousand rupees, a fee of two per cent is payable on the net value *Collector of Malda* v *Nirode Kamini Debya*, 17 C W N 21; 15 Ind. Cas 621 But this case is not followed in *Nikunja Rani Chowdhurani* v *Secretary of State for India*, 43 Cal 230: 20 C. W N 504: 22 C L. J 375: 31 Ind Cas 460

The stamps are not to be filed with the application for Probate or Letters of Administration The court fee stamps are paid into Court after the will is proved or issue is ordered and an application is made for obtaining the same. *Pa Ke* v. *Naw Bo He*, L B R (1893-1900) 623

CHAPTER IV.

PROCESS-FEES.

Rules as to costs of processes

20. The High Court shall, as soon as may be, make rules as to the following matters:—

(*i*) the fees chargeable for serving and executing processes issued by such

Court in its appellate jurisdiction, and by the other Civil [and Revenue] Courts established within the local limits of such jurisdiction;

(*ii*) the fees chargeable for serving and executing processes issued by the Criminal Courts established within such limits in the case of offences other than offences for which police-officers may arrest without a warrant; and

(*iii*) the remuneration of the peons and all other persons employed by leave of a Court in the service or execution of processes.

The High Court may, from time to time, alter and add to the rules so made.

Confirmation and publication of rules

All such rules, alterations, and additions shall, after being confirmed by the Local Government, be published in the local official Gazette, and shall thereupon have the force of law.

Until such rules shall be so made and published, the fees now leviable for serving and executing processes shall continue to be levied, and shall be deemed to be fees leviable under this Act.

NOTES.

Change in law.—In the Punjab, the words "and revenue" are repealed, *see* the Punjab Land Revenue Act, 1887 (17 of 1887).

The words "and sanctioned by the Governor-General of India in Council" were repealed by Act XXXVIII of 1920 (The Devolution Act).

Power to make Rules.—As to the power to make rules and prescribe fees for processes in Lower Burma, see the Lower Burma Courts Act, 1900 (6 of 1900), s 41 As to power of the Judicial Commissioner to make rules and regulate the fees to be paid for civil processes in Upper Burma, *see* the Upper Burma Civil Courts Regulation, 1896 (1 of 1896), *s* 30 (*1*) (*a*) As to power of the Bombay High Court to prescribe fees for processes issued by Courts constituted under the Bombay Civil Courts Act, 1869 (14 of 1869), see s 42 of that Act, 1. As to computation of certain fees on applications under s 17 of the Agra Tenancy Act, 1901 (U. P Act 2 of 1901)

As to power of Chief Commissioner of British Baluchistan to make rules and prescribe fees, see the British Baluchistan Criminal Justice Regulation, 1896 (8 of 1896), s 20 (*1*) (*a*), and the British Baluchistan Civil Justice Regulation, 1896 (IX of 1896), s 92 (*a*)

The High Court has no power to relax process fee rules framed by it in accordance with the provisions of section 20 of the Court Fees Act and s 93 (Order 48 Rule 1) of the Code of Civil Procedure does not give any power to any court to depart from those rules as that section gives court power to pass judicial orders between party and party as to who should pay the process fees *In the matter of application of Studd*, 26 Cal 124, 3 C W N 82 But in later rules there is a provision for reduction of process fees where there are numerous persons to be served in the same or adjacent villages regarding process fees for cases pending in the High Court

A commission issued to an Amin to make a local investigation is not a process *Jagat Kishore Acharyea Chowdhury* v. *Denonath Chukerburty Chowdhury*, 17 Cal 281

Clause III.—"The remuneration of peons, is by section 20 settled by the High Court." *Dharamchand Lall* v *Queen Empress*, 22 Cal 596 (607)

Tables of process fees

21. A table in the English and Vernacular languages, showing the fees chargeable for such service and execution, shall be exposed to view in a conspicuous part of each Court.

Number of peons in District and Subordinate Courts

22. Subject to rules to be made by the High Court, and approved by the Local Government,

every District Judge and every Magistrate of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court and each of the Courts subordinate thereto, and for the purposes of this section, every Court of Small Causes established under Act XI of 1865 (to consolidate and amend the law relating to Courts of Small Causes beyond the local limits of the ordinary original Civil Jurisdiction of the High Court of Judicature) [the Provincial Small Cause Courts Act] shall be deemed to be subordinate to the court of the District Judge.

Number of peons in Mofusil Small Cause Courts.

NOTES.

Change in law.—The words "and the Governor-General of India in Council" are repealed by Act XXXVIII of 1920 (The Devolution Act).

For the reference to Act XI of 1865 should be read the Provincial Small Cause Courts Act, 1887 under Section 2 (2) of the General Clauses Act.

For rules made under the powers conferred by this section in—

Ajmir-Merwara . .	*see* Aj. R and O., Vol. 1
Bengal	*see* General Rules and circular orders (Civil) and Calcutta Gazette, 1921.
Assam, by the High Court, Calcutta .	*see* Assam Gazette, 1902, Pt. IIA, p. 824.
Bombay . . .	*see* Bom. R. and O., Vol. I.
Madras . . .	*see* Mad. R and O., Vol. 1, and Fort St. George Gazette, 1901, Pt 1, p. 1904.
United Provinces of Agra and Oudh .	*see* United Provinces R. and O., Vol. I.
Central Provinces .	*see* Cen. Prov. R. and O.

As to Burma cf., s 41 of the Lower Burma Courts Act, 1900 (6 of 1900).

"The number of the peons to be employed for the service

and execution of processes in each district is by Section 22 of the Court Fees Act fixed by the District Judge, and the remuneration is by Section 20 settled by the High Court. The Court Fees Act distinctly contemplates that the peons are to be employed, not only for the service of summonses, notices or orders, but for the execution of other processes, such as warrants of arrest or of attachment and distress " *Dharam Chand Lall v. Queen Empress*, 22 Cal 596 (607).

Number of peons in Revenue Courts

23. Subject to rules to be framed by the Chief Controlling Revenue-Authority, and approved by the Local Government, every officer performing the functions of a Collector of a District shall fix, and may from time to time alter, the number of peons necessary to be employed for the service and execution of processes issued out of his Court or the Courts subordinate to him

NOTES.

Change in law.—In the Punjab, s 23 is repealed, see the Punjab Land Revenue Act, 1887 (Act 17 of 1887)

The words "the Governor-General of India in Council" are repealed by Act XXXVIII of 1920 (Devolution Act)

For rules framed under the powers conferred by this section in—Madras *see* Mad R. and O., Vol. I

Central Provinces *see* Cent Prov Gazette, 1905, Pt. III, p 570 See Assam M. R. and O

As to Burma, cf, s 48 of the Lower Burma Courts Act, 1900 (6 of 1900)

24. [PROCESS SERVED UNDER THIS CHAPTER TO BE HELD TO BE PROCESS WITHIN THE MEANING OF THE CODE OF CIVIL PROCEDURE.] REPEALED BY THE REPEALING AND AMENDING ACT, 1891 (XII OF 1891).

CHAPTER V.

OF THE MODE OF LEVYING FEES.

Collection of fees by stamps.

25. All fees referred to in section 3, or chargeable under this Act, shall be collected by stamps.

Stamps to be impressed or adhesive

26. The stamps used to denote any fees, chargeable under this Act, shall be impressed or adhesive, or partly impressed and partly adhesive, as the [Local Government] may, by notification in the [Local Official Gazette] from time to time direct.

NOTES.

Change in law.—For the words "the Governor-General of India in Council," the words "Local Government" and for the words "Gazette of India," the words "the Local Official Gazette" are substituted by Act XXXVIII of 1920 (The Devolution Act).

Rules.—For rules as to levy of Court Fess by adhesive and impressive stamps. See Gazette of India, 1883, Part I, p. 189.

Stamp to be used.—A certificate was issued on an ordinary stamp and an objection was taken that it was not properly stamped in accordance with the Court Fees Act of 1870, as required by section 17 of the Succession Certificate Act (Act VII of 1889), because it does not bear upon it the words "court fees," as directed in the Notification of the Governor-General, No 361, dated 18th April, 1883. The High Court held.—

"It is true that Section 26 of the Court Fees Act (VII of 1870) provides that the stamp used to denote the fee chargeable under the Act 'shall be impressed or adhesive or partly impressed and partly adhesive as the Governor-General of India in Council may by notification in the Gazette of India from time to time direct,' and that by notification of the Governor-General (No 361, dated 18th April, 1883), it was provided that in case the fee chargeable should be under Rs. 10, an adhesive stamp should be used, and when the fee should exceed Rs 10, an impressed stamp, and that in both cases the stamp should bear the words 'court fees;'

but as to the direction that the stamp should bear the words 'court fees,' it is to be remarked that it is not a matter on which by the terms of Section 26 of the Court Fees Act, the Governor-General in Council had authority to give any direction, and it can, therefore only be regarded as a departmental order, the non-observance of which cannot invalidate the stamp for the purposes of the Act" *Annapurna Bai* v *Lakshman Bhikaji*, 19 Bom. 145

Stamps for use in High Court only—When the lower court rejected a plaint after punching the stamps bearing the words "for use in the High Court only" impressed upon the back of the stamps on the ground that such stamps are for use in the High Court only, held, that such rejection was not justified The words on the back of the stamps may have some significance for administrative purposes, but they are not capable of invalidating the stamps themselves. *Naresh Chandra Sinha* v. *Charles Joseph Smith*, 1926 A I R. 408 (Patna)

Rules for supply, number, renewal and keeping accounts of stamps.

27. The Local Government may, from time to time, make rules for regulating

(*a*) the supply of stamps to be used under this Act,

(*b*) the number of stamps to be used for denoting any fee chargeable under this Act,

(*c*) the renewal of damaged or spoiled stamps, and

(*d*) the keeping accounts of all stamps used under this Act:

Provided that, in the case of stamps used under section 3 in a High Court, such rules shall be made with the concurrence of the Chief Justice of such Court.

All such rules shall be published in the Local Official Gazette, and shall thereupon have the force of law.

NOTES.

The parties ought to use as small a number of stamps as they can, *Ranee Khajooroonissa* v. *Musst. Rohimunnessa*, 16 W. R. 152.

When the exact amount of any fee chargeable under the Act can be denoted by a single stamp, such fee shall be denoted by a single stamp unless it is certified that such a stamp is not in stock See *Calcutta Gazette*, dated 5th May, 1875, Part 1, page 537 and 24 W. R. Revenue Circular, page 1. But there is no illegality in making up the stamp fee chargeable in an appeal by means of a number of stamps *Mirza Dawd Ali* v. *Syed Nadir Hossein*, 16 W. R. 153 ; *Tarini Churn* v. *Taranath Gooha*, 12 W R. 449 , *Huro Monee* v. *Kristo Indro Shaha*, 17 W. R. 200 But the notification in the *Calcutta Gazette* set out above has under this section, the force of law.

Where the appellant being unable to procure one stamp filed his appeals with two labels with a certificate by treasurer that one label was not in stock, but the District Judge rejected the appeal held that the appeal should not have been dismissed, *Bansi Lall* v *Raghunath Sahai*, (1887) 7 All. W. N. 212.

Stamping documents inadvertently received

28. No document which ought to bear a stamp under this Act, shall be of any validity, unless and until it is properly stamped.

But, if any such document is, through mistake or inadvertence, received, filed, or used in any Court or office, without being properly stamped, the presiding Judge or the head of the office, as the case may be, or, in the case of a High Court, any Judge of such Court, may, if he thinks fit, order that such document be stamped as he may direct; and, on such document being stamped accordingly, the same, and every proceeding relative thereto, shall be as valid as if it had been properly stamped in the first instance.

NOTES.

Application.—Section 28 does not apply to cases where there was no stamp on the plaint when presented but supplied afterwards. *Lakha* v *Munshi Ram*, 38 P. R. 1900.

Document.—The word "document" bears the same meaning as in ss 4 and 6 of this Act

"A memorandum of appeal is consequently a document which ought to bear a stamp under the Court Fees Act, 1870, within the meaning of s 28 of that Act." *Balkaran Rai* v. *Gobinda Nath,* 12 All 129 (139) . 10 All. W. N. 39 F. B.

The Section does not apply to probate duty See s 19K of this Act *In re Bhubaneswar Trigunait,* 52 Cal 871 . 29 C W. N. 879.

The second paragraph to s. 28.—Object.—The object of the second paragraph of s 28 is to the Court or the Judge, when such an improperly stamped document has through mistake or inadvertence been received, filed or used in the Court, to make an order that such document may be properly stamped, and on being so stamped to give effect to it as a document as valid as if it had been properly stamped in the first instance " *Balakaran* v *Gobind Nath,* 12 All 129 (150) 10 All W. N. 39 F B , *Dilwar Husain* v *Bhagwant Das,* 27 All. W. N. 63 . 4 All L J 130

Head of the Office.—The expression "head of the office" in Section 28 does not refer to the head of the office of a Court, or at any rate to the head of the office of a High Court, but to the head of the public offices as, for instance, the Board of Revenue *Balkaran Bai* v. *Gobind Nath Tewari,* 12 All 129: 10 All W N 39

As to deficiency of Court Fees made up after the expiry of the time for filing the appeal See under s. 6, *supra*

After the trial court has extended the time, the appeal court cannot therefore with the judicial discretion exercised, *Priyanath* v *Meajan,* 24 C L J 88 See also under s 6 And an order excusing delay in payment of deficit court fees, is according to the practice of the Madras High Court, made subject to objection at the final hearing *Acharath Parakhat* v *Acharath Bappan,* 23 Ind Cas 946.

Miscalculation —Where the insufficiency was due to miscalculation on the part of the plaintiff and deficiency was supplied after the period of limitation, held, that the suit must be dismissed as it is not the duty of the office to point out miscalculation *Chaterpal* v *Jagram,* 27 All 411 · (1905) 25 All. W. N. 127 2 All L J 55 ; *Jagram* v *Chaterpat.* . (1904) 24 All. W N 133 , *Muhammad Ahmad* v *Muhammad Sirajuddin,* 23 All W N 118

Mistake —Mistake is a slip made, not by design, but mischance *Hari Ram* v *Akbar Hossein,* 29 All. 749 : 4 A. L J. 36 (1907) 27 A W N. 253 · 2 M. L T. 275.

"Mistake or Inadvertence"—Means mistake or inadvertence on the part of court and its officers and not on the part of the parties or their advisers —*Balkaran* v.*Gobinda Nath*, 12 All. 129. 10 All W. N. 39 F. B., *Dilwar Husain* v. *Bhagwat Das*, 27 All. W. N. 63 : 4 All. L. J. 130.

Mistake of Plaintiff.—When by a mistake of plaintiff, and not of the Court or of any officer of the Court, a plaint was filed upon insufficient court fees and this was not discovered until after the period of limitation for the suit had expired, it was held that the suit was barred. *Ram Tahal Singh* v. *Dubri Rai*, 28 All 310 (1906) 26 All W. N. 21 : 3 All. L. J. 838 ; *Munro* v. *The Cawnpore Municipal Board*, 12 All. 57 : 9 All. W. N. 197, *Muhammad Ahmad* v. *Muhammad Sirajuddin*, 23 All. 423 ; *Balkaran* v. *Gobind*, 12 All. 129 : 10 All. W. N. 39 F. B.

A mistake of law as to the court fee payable brings the case within Section 28 of the Court Fees Act. *Haricharan Dey* v. *Baikuntha Nath*, 21 Ind. Cas. 866 ; *Valambal Aminal* v. *Vythilinga Mudaliar*, 24 Mad. 331 ; on appeal in 25 Mad. 380 : 11 M L. J. 119.

The Punjab High Court held that if after the mistake in the amount of court fees paid being pointed out, Counsel refused to rectify the mistake, he is not entitled to any extension of time under Section 149 C. P. C., *Tikkan Ram* v. *Bosa Ram*, 67 Ind. Cas 106.

Mistake of a trivial nature.—Where through mistake a memorandum of appeal was insufficiency stamped, but the mistake was of such a trivial nature that by exercise of due care and attention it could have been avoided, the Court refused to allow the appellant time to pay proper court fees. *Fatteh Singh* v. *Babu Ram*, 67 Ind. Cas. 130 (Punjab).

Mistake of Officer.—If the plaint be received in office through *mistake or inadvertence* of the officer of court, then plaintiff is entitled to the benefit of s. 28 of the Court Fees Act. *Hasibulnissa* v. *Ghafurull'ah-Khan*, 29 All 382 : 22 All. W. N. 110 : 4 All L. J. 363 ; *Anupa* v. *Madho Singh*, 22 All. W. N. 153 ; *Debendra Mohan Rai* v. *Sona Kuar*, 21 All. W. N. 21.

Power of Court after Registration of Appeal.—When a plaint has been registered, and a court, having reason subsequently to think that the market value or nett profits of the subject matter of claim, have been wrongly estimated, holds an enquiry either by itself or through a commissioner appointed for the purpose and finds that sufficient court fees have not been paid, it is bound to stay that suit and to fix a time within which the additional court fee is to be paid. If the court fee is paid within that time the plaint is valid as if presented with proper stamp. The court is not bound to appoint a commissioner under s. 9

and s 10 applies even when the court itself holds the enquiry. The plaint having been registered on the report of the Munsarim the Court was bound to give the plaintiff time to make good the deficiency in court fee, when subsequently discovered, and s 28 of the Court Fees Act applies to such a case *Hari Ram* v *Akbar Hossein*, F B 29 All 749 4 A. L. J 636: (1907) 27 A W N 233 2 M. L T 375, *followed in Tajammell Husain Khan* v *Nawabad Khan*, 6 M L. T. 360. 3 Ind. Cas. 820; *Govaranga Saha* v *Boto Krishna Patro and others*, 4 Ind. Cas 503 32 Mad 305 · 6 M L T. 129 · 19 M. L J. 340.

Where a memorandum of appeal was reported by the Officer of Court to be sufficiently stamped but at the hearing, Court found that the memorandum is, in fact, insufficiently stamped and demanded additional court fees which was paid within the time allowed, the court cannot at a later stage refuse to hear the appeal on that portion of the appeal in which deficiency occurred *Anupa* v *Madho Singh*, (1902) 22 All. W. N. 153

Power of Appeal Court to demand Court Fees not paid in Lower Courts—When a document has been received in the Lower Courts without being properly stamped, and the deficiency is detected in the High Coort, that court can under Section 28 of the Act direct that it should be properly stamped. *Chedi Lal* v *Kirath Chand*, 2 All 682 F. B ; see also *Debendra Mohan Rai* v *Sona Kuar*, (1901) 21 All W N. 21; *Chenappa* v. *Raghunath*, 15 Mad. 29.

The Court of Appeal is not bound by the decision of the Court below as to the stamp on the plaint. *Motigavri* v. *Pranjivandas*, 6 Bom. 302 *See also cases under Section* 12 *of this Act*

Power of Revenue Officer to demand Court Fees.—A Revenue Officer has power to direct, on revision, the payment of court fees and to order that plaint bearing insufficient court fee be properly stamped, although no objection was raised as to the same in the lower court before the Assistant Settlement Officer. *Dhakeswar Prosad Narain Singh* v. *Harihar Prosad Narain Singh*, 22 C. L J. 57.

A Revenue Officer has power under s. 28 of the Court Fees Act to direct payment of court fees, in revision, when no objection has been raised as to the same in the Court of first instance. *Narain Singh* v. *Iswardhari*, 30 Ind. Cas 862.

Power of Appeal Court to reject the Memorandum.—As this section does not override the Code of Civil Procedure, a Civil Court cannot reject a Memorandum without giving ' party time to make up the deficiency. *Sardar Khusal Si*[illegible] *Singh*, 156 P. R 1888, followed in *Jiwan Das* v. [illegible]

39 I. C 766. See also *Manmatha Nath Biswas* v. *Rohilli Moni Dasi*, 27 All. 406 (1905), 25 All. W. N. 6: 2 All. L. J. 84. *Bai Anope* v *Mulchand Girdhar*, 9 Bom. 355; *Achuta Ramchandra Pai* v *Nagappa Bab Balgaya*, 38 Bom. 41: 15 Bom. L R. 902 21 Ind Cas 327. See also *Radha Kanta Saha* v. *Debendra Narain Saha*, 49 Cal. 880. 38 C. L. J. 74: 27 C. W N 567, 70 Ind Cas 101; (1922) A. I R. 506 (Cal.).

Abandonment of a portion of the Claim.—When in the Trial Court, the plaintiff when called upon to pay deficit court fees abandons a part of his claim, he cannot be compelled to pay the deficit in a higher Court under the penalty of having his whole case dismissed. *Ram Prosad* v. *Bhiman*, 27 All. 151 1 All L J. 577.

Objection in Appeal Court after decision by the Trial Court.—Where on an objection as to the sufficiency of the court fee on the memorandum of appeal it appeared that the court fee was exactly the same as that on the plaint and the trial Judge had on an objection by the defendant framed the issue on the point and decided it in favour of the plaintiff and that the defendant had accepted the decision and stamped his own appeal in the lower appellate court accordingly. *Held*, that under the circumstances the objection could not be entertained *Chhunnu Lal* v *The Bank of Upper India, Ltd.*, 106 P W. R 1917; 40 I C 904.

Amended documents

29. Where any such document is amended in order merely to correct a mistake, and to make it conform to the original intention of the parties, it shall not be necessary to impose a fresh stamp.

NOTES.

When a Revenue Court returns a plaint for presentation to the Civil Court as regards part of the claim, the party is not exempted under section 29 of the Court Fees Act from payment of the court fees. *Ganda Ram* v. *Sain*, 132 P. R. 1892.

Cancellation of stamp

30. No document requiring a stamp under this Act shall be filed or acted upon in any proceeding in any court or office until the stamp has been cancelled.

Such officer as the Court or the head of the

office may from time to time appoint shall, on receiving any such document, forthwith effect such cancellation by punching out the figure-head so as to leave the amount designated on the stamp untouched, and the part removed by punching shall be burnt or otherwise destroyed.

NOTES

Where a plaint was stamped with an impressed stamp and an adhesive stamp but the adhesive stamp had the name of a different attorney and a different date and the Punching officer refused to punch it *Held*, that the Punching officer was right and that the attorney should have placed before the Registrar the special circumstances to enable him to extend the rules and the practice in the original side amongst attorneys *of accommodating each other in respect of stamps not used* was deprecated *George Gerson* v *Radha Kissen*, 6 C. W. N 785

Return of Plaints by Courts after Cancellation of Stamp.—A Court when returning a plaint for presentation to proper court under order VII rule 10 of the Code of Civil Procedure, cannot be said to be acting upon it within the meaning of section 30 of the Court Fees Act and the plaintiff should not be required to pay court fees over again *S. Visveswara* v. *T M Nair*, 35 Mad 567 21 M L J. 533: 10 M. L. T. 29: 10 Ind Cas 201 See also *Jagjivan* v *Magdum Ali*, 7 Bom. 487 *Kandu* v *Konda*, 8 Mad 62 *Prabhakar Bhat* v. *Vishwambhar Pandit*, 8 Bom 313 F. B

CHAPTER VI.

MISCELLANEOUS.

Repayment of fees paid on applications to criminal courts.

31. (*i*) Whenever an application or petition containing a complaint or charge of an offence, other than an offence for which police-officers may arrest without warrant, is presented to

a Criminal Court, the Court, if it convict the accused person, shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee paid on such application or petition.

(*ii*) In the case mentioned in Section 18, the Court, if it convict the accused person shall, in addition to the penalty imposed upon him, order him to repay to the complainant the fee, if any, paid by the latter for the examination.

(*iii*) When the complainant has paid fees for serving processes in either of the cases mentioned in the first and second paragraphs of this section, the Court, if it convict the accused person, shall in addition to the penalty imposed upon him, order him to repay such fees to the complainant.

(*iv*) All fees ordered to be repaid under this section may be recovered as if they were fines imposed by the Court.

NOTES.

Alteration in Law.—This section has been re-enacted as *Section 546A of the Code of Criminal Procedure (Act v. of 1898)* as amended by Act XVIII of 1923 whereby appellate courts are also empowered to pass similar orders.

An Order under Section 31 of the Court Fees Act directing an accused to pay to the complainant the amount paid in court fees by the latter, can only be passed where the offence complained of was a non-cognizable one. *Mingan* v. *Emperor*, 80 I. C. 56 (All.).

In cognizable cases the accused should not be ordered to pay costs to the complainant *Maung San Myin and others* v. *King Emperor*, 80 I. C. 187; 1923 A. I. R. 245 (Rangoon).

This section directs that the order for repayment of the process fees and stamp must be in addition to the penalty imposed. An order passed by a Magistrate under section 31 of the Court Fees Act, directing an accused person to pay to

the complainant, the court fees on the petition of complaint is no part of the sentence so as to make it a sentence of fine within the meaning of section 413 of the Code of Criminal Procedure. *Madan Mondul* v *Haran Ghose*, 20 Cal. 687: followed in *Emperor* v *Karuppana Pillai*, 20 Mad. 188. Therefore an Appellate Court is not competent to set aside an order by the trying Magistrate under section 31 of the Court Fees Act *Emperor* v *Maddipatla Sub-barayudu*, 31 Mad 547 5 M L T 223.

Where the magistrate convicted two accused and ordered them to pay Court and Process Fees in equal shares but the appellate court acquitted one of them and ordered the other to pay the whole amount, *held*, that court fees ordered to be paid under section 31 of the Court Fees Act are recoverable as if they are fines imposed by the Court, but they are not part of the fine imposed as punishment for the offence. *In re Vemuri Seshamma*, 26 Mad. 421 But see *Queen Empress* v *Tangavelu Chetti*, 22 Mad 153, where it was held that an "order to pay fee under section 31 is an integral part of the sentence and such fee must be treated as a fine imposed by Court" In this case the Assistant Magistrate's order was that it should be paid out of the fine collected, hence the order cannot be said to be under Section 31 See also *In re Ediga Thimmiah*, 47 Mad 914 1925 A. I R 136 (M.) ; 82 I. C 141.

The order for payment to the complainant of the Court and Process Fees paid by him must be *in addition* to the fine imposed and not out of the fine imposed *Crown* v. *Po. Hlaw*, 1 L. B. R. 9.

A person who was convicted by a Deputy Magistrate of having caused hurt, was ordered to pay a fine of Rs. 15, and also complainant's costs of the prosecution In the month following the conviction, the Deputy Magistrate issued a warrant for the collection of Rs. 12-4 from the accused, of which Rs. 2-4 was leviable under section 31 of the Court Fees Act as court fee paid by the complainant, and Rs. 10 under section 545 of the Code of Criminal Procedure for two fees of Rs. 5 each paid by the complainant to the medical officer for a certificate and for giving evidence in the case. Objection having been made to the recovery of these sums, the case was referred to the High Court for orders *Held*, that the levy of court fees was warranted by section 31 of the Court Fees Act, which is not modified by section 545 of the Code of Criminal Procedure. *Queen Empress* v. *Yamana Rao*, 24 Mad. 305.

Maintenance Order.—The Court cannot order the defaulter to pay to the complainant the amount of court fee paid.—*In the matter of Pali*, Bom. H. C. Ref. No. 118 of 1889.

Workman's Breach of Contract.—Magistrate cannot order repayment of the amount of stamps. *Emperor* v. *Dhandu Krishna*, 6 Bom. L. R 255

Costs ordered under section 22 of the Cattle Trespass Act.—Illegal seizure and detention of cattle is not an offence within the meaning of section 31 of the Court Fees Act. Hence Courts are not competent to order repayment of the amount of stamp *Reg* v *Arji Bin Naru*, 8 Bom H. C. Cr. Ca. 22. But see section 4 (o) of the Criminal Procedure Code (V of 1898) and section 19 of the Court Fees Act. See also *Sheikh Hussain* v *Sanjivi*, 7 Mad 345, *Queen Empress* v. *Khajabhoy*, 16 Mad 423; *King-Emperor* v. *The Nyo U. and ors.*, 4 L. B R 11

32. [Amendment of Act VIII of 1859 and Act IX of 1869] Repealed by the Repealing and Amending Act, 1891 (XII of 1891).

Admission in criminal cases of documents for which proper fee has not been paid

33. Whenever the filing or exhibition in a Criminal Court of a document in respect of which the proper fee has not been paid is, in the opinion of the presiding Judge, necessary to prevent a failure of justice, nothing contained in Section 4 or Section 6 shall be deemed to prohibit such filing or exhibition.

Sale of stamps

34. (1) The Local Government may, from time to time make rules for regulating the sale of stamps to be used under this Act, the persons by whom alone such sale is to be conducted, and the duties and remuneration of such persons

(2) All such rules shall be published in the local official Gazette, and shall thereupon have the force of law.

(3) Any person appointed to sell stamps who disobeys any rule made under this section, and any

person not so appointed who sells or offers for sale any stamp, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

NOTES.

Change in law.—This Section was substituted for the previous one by Repealing and Amending Act XII of 1891, Sch II

Substitution of one Stamp for another.—Removing a new court fee stamp from a document and substituting a used one with alteration of figures thereon is alteration of paper, under section 477A of the Penal Code *Emperor* v *Bibudhananda Chakraburti*, 47 Cal 71 · 54 Ind. Cas 892.

Sale of Stamp—Sub-section 3 contemplates the case of a thief selling a stolen stamp for value, although the thief cannot give a legal title by the transaction *Queen-Empress* v. *Virasami*, 24 Mad 319.

Under old law sale of court fee stamps without authority was not offence *Emperor* v *Jallu*, 4 All 216 2 All. W N 23.

Exchange of stamps.—Where a mukhtear who has purchased a Court Fee Stamp for one client transfers it to another client in exchange of another stamp of the same value to be delivered later on, *held*, that there was no sale within the meaning of section 34 of the Court Fees Act and the conviction of the mukhtear was set aside. *Kedar Nath Shaha* v. *Emperor*, 30 Cal. 921 · 7 C. W N. 704.

Gift of Stamp.—An opinion was expressed that a person can make a gift of a court fee stamp to another, *Bibi Chandoo* v. *Jawala Pershad*, 253 P. L. R 1911: 169 P. W. R. 1911: 11 Ind. Cas. 840.

Power to reduce or remit fees

35. The Local Government may, from time to time, by notification in the [local official *Gazette*] reduce or remit, in the whole or in any part of [the territories under its administration] all or any of

the fees mentioned in the first and second schedules to this Act annexed, and may, in like manner, cancel or vary such order.

NOTES.

Change in law.—For the words "British India" the words "the territories under its administration" were substituted by Act XXXVIII of 1920 (The Devolution Act).

The words "Local Government" and "local official Gazette" were substituted for the words "Governor-General of India in Council" and "Gazette of India" by Devolution Act, 1920 (Act XXXVIII of 1920) Section 2, and first schedule.

Saving of fees to certain officers of High Court

36. Nothing in Chapters II and V of this Act applies to the commission payable to the Accountant-General of the High Court at Fort William, or to the fees which any officer of a High Court is allowed to receive in addition to a fixed salary.

SCHEDULE I.

[*Ad Valorem Fees*].

ARTICLE 1.

Number		Proper Fee
"1 *Plaint [written statement pleading a —set-off, or counter-claim,] or memorandum of appeal (not otherwise provided for in this Act) [or of cross-objection] presented to any Civil or Revenue Court except those mentioned in section 3	When the amount or value of the subject-matter in dispute does not exceed five rupees, and	Six annas
	when such amount or value exceeds five rupees, for every five rupees or part thereof, in excess of five rupees, up to one hundred rupees, and	Six annas
	when such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees, up to one thousand rupees	Twelve annas
	when such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of thousand rupees, up to five thousand rupees,	Five Rupees
	when such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, uptc ten thousand rupees	Ten Rupees.
	when such amount or value exceeds ten thousand rupees, for every five hundred rupees or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees	Fifteen Rupees.

Number		Proper Fee.
	when such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, upto thirty thousand rupees	Twenty Rupees
	when such amount or value exceeds thirty thousand rupees, for every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees	Twenty Rupees.
	when such amount or value exceeds fifty thousand rupees, for every five thousand rupees or part thereof, in excess of fifty thousand rupees	Twenty-five Rupees
	Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be three thousand rupees."	

NOTES.

Change in law.—The words "written statement pleading a set-off or counter-claim" after the word "plaint"; and the words "or of cross objection" after the bracket, were substituted by Section 155 and Schedule 4 of the Code of Civil Procedure (Act V of 1908).

Recent Changes.—This article has been amended in Bengal (by Bengal Act IV of 1922), in Assam, by Assam Act II of 1922), in Madras (by Madras Act V of 1922), in Bombay (by Bombay Act II of 1926), in B. & O (by B. & O. Act I of 1922), in C P by C. P. Act I of 1923 in Punjab by Punjab Act VII of 1922 as amended by Punjab Acts I and VI of 1926.

Note.—Under this Article the court fees payable on a memorandum of appeal or cross objection is to be assessed *ad valorem* on the value of the subject-matter in dispute; but as regards plaints the amounts of the court fees payable are

to be calculated under section 7 of the Court Fees Act read with this Article.

Suits Valuation Act.—The provisions of section 8 of the Suits Valuation Act applies to suits as well as to appeals which arise out of these suits, *Bai Varunda Lakshmi* v. *Bai Manegavri*, 18 Bom 207

Proper Appeal Court.—In order to determine the proper appellate court what has to be looked is the value of the original suit, *i.e*, the amount or value of the subject matter of the suit The word "value" must be taken to be the value assigned by the plaintiff in his plaint and not the value as found by the court unless it appears that either purposely or through gross negligence, the true value has been altogether misrepresented by the plaintiff. *Muhammad Abdul Majid* v *Ala Bux alias Allan*, 47 All. 534, 1925 A. I. R 376 (All) See also *Chuni Lal* v *Tricamdus Ramdas*, 1926 A. I. R. 71 (Nag)

Application.—Article 1 of Schedule 1 of the Court Fees Act applies only to those cases which are not otherwise provided for under the Act, *Qyamuddin* v. *Delhi Flour Mills Company*, 47 Ind. Cas 992

In determining the amount of court fee payable, the sole question to be considered is what is the "subject matter" of the suit In cases where the plaintiff is bound to ask for possession, *ad valorem* court fees under section 7 paragraph 5 are to be paid. *Syed Mahamed Gouse* v *Government*, 1925 M. W N 252, 48 M. L. J 571.

The principles contained in section 7 of chapter III are applicable also to appeals before the High Court *Chunni Lal* v. *Sheo Charan Lal Lalman*, 23 A. L. J. 725; 47 All. 756; 1925 A I. R 787 (Allahabad)

Valuation of Appeal.—The court fee payable on an appeal, is to be calculated upon the valuation of the subject matter of the suit arrived at by the lower court. *Surendra Narain Sinha* v *Hafijpur Rahman*, 13 Ind. Cas. 379.

The value of an appeal is the value of the relief granted by the decree which a party wishes to get rid of; and in a claim for possession the value is to be determined under section 7 para V of the Court Fees Act. In *re G. B Setthayamma*, 1925 A I R 323 (M) See also *in re Parkodi Achi*, 45 Mad. 246; 41 M L. J. 587; 1921 M. W. N. 854; 68 I C. 444; 1922 A. I. R. 211 (M)

The appellant cannot reduce the value of the suit for the first time in appeal to escape the payment of court fees *Harbans Sahu* v. *Lalmoni Kuer*, 62 Ind Cas. 36 The defen-

dant in his appeal should not depart from the original valuation by the plaintiff when the subject matter continues to be identical *Samiya Mavali* v. *Minammal*, 23 Mad. 490: 10 M L T. 240 A defendant appealing against the whole decree is bound by the valuation made in the plaint by the plaintiff. *Dhupati Srinivasa Charlu* v. *A. Perindevamma*, 39 Mad. 725; 33 Ind. Cas. 602, 30 M. L. J., 402 F. B.

But in *Chunni Lal* v. *Sheo Charan Lal Lalman*, 23 A. L J. 725 47 All. 756 1925 A. I. R. 787 (A), the Allahabad High Court allowed the defendant appellant to put in a reduced valuation on the memorandum of appeal in a suit for dissolution of partnership when the lower appellate court decided against the defendants and directed accounts to be taken. The High Court held, that "in cases where the valuation has of necessity to be arbitrary and tentative, the person who has to present a petition of plaint or appeal and who is called upon to pay the necessary court fee will have to fix the valuation and unless the Court is of opinion that the valuation has been put down fraudulently, it will be difficult not to accept the valuation so made"

The valuation of a suit under the former Court Fees Act may be altered in appeal under the provision of the existing Court Fees Act which repealed the former Act, *Mt. Bhugabutty Koer* v. *Mt. Kustoori Koer*, 15 W. R. 272.

Schedule I of the Court Fees Act does not stand by itself but is a supplement to section 7 and other sections of the Act. Section 7 states the various processes by which the value in different suits are arrived at, and the schedule then applies the proper court fees to those values payable either upon the plaint or memorandum of appeal. The value of a particular relief, once correctly found for the purpose of stamping the plaint in a suit, remains unchanged in subsequent stages of the suit. The value of the particular appeal remains the same whether the appeal be preferred against its refusal or its grant, *Dhiraj Singh* v. *Rajaram*, 6 N. L. R. 164.

In a suit against a *Matwalli* of a Mosque "the defendant may not have any personal interest at all and yet the subject matter of appeal may be as valuable as the subject matter of suit" and the High Court ordered the defendant to stamp the memorandum of appeal with the same amount of court fees as on the plaint, *Mohamed Masik* v. *Malkai M. Ugwa Budshah Mehala Shaheba*, 10 Cal. 380.

Decree for a higher amount.—*Insufficient Court Fee.*—An appellate court cannot pass a decree for a larger amount than that claimed in the memorandum of appeal, unless before the judgment is pronounced, an amendment of the memoran-

dum of appeal is allowed and additional court fees put in, *Percival v. Collector of Chittagong*, 30 Cal. 576. In *Ram Doolal v. Gopal Kristo*, 16 W. R. 156, the Calcutta High Court refused to pass a full decree because full court fees were not paid but passed a simple declaratory decree

Where an appeal for recovery of money and interest thereon due on *baki* accounts, is not properly stamped, the appeal cannot be dismissed in toto but a decree for a larger amount in excess of the sum for which court fees have been paid cannot be passed. *Firm Nihal Chand Atma Ram v. Sardari Mal*, 96 I. C. 135 : 1925 A. I. R. 558 (Lah.)

Subject Matter.—*Madras High Court*.—The words "subject matter in dispute" refers to matters in dispute in appeals and the provisions of Section 7 paragraph IX applies to suits and not to appeals. *Reference under the Court Fees Act*, 29 Mad. 367 : 16 M. L. J. 287. See also *Krishnama Chariar v. Srinivasa Ayyangar*, 4 Mad. 339.

Where the subject matters of suit and the subject matters of appeal are the same, the amount or value of subject-matter is nothing more than the value of the property which the plaintiff is seeking to recover and the possession of which the defendant is seeking to retain. *Sohan Lal v Sardar Khan*, 16 P. W. R. 1916 : 25 P. R. 1916 : 32 Ind Cas 121, *Ma Shin v. Maung Shwe Hnit*, 1925 A I R. 145 (R)

Court Fees on appeal against part.—It was not contemplated by the legislature that the court fees payable on part of the whole claim in appeal, is in the absence of express direction to the contrary to exceed the court fees payable on the whole claim. *Hazari Singh v. Piran*, 92 P. R. 1900 ; *Harbhagwan v. Amar Singh*, 5 Lah. 137 . 83 I. C. 332.

Account Suit—Appeal.—When the defendant appeals from the whole decree in a suit for accounts, he is bound by the valuation by the plaintiff in the plaint

Damodara Padhano v Haribandhu Patnaick, 1921 M. W N 558 : 70 Ind. Cas 392.

The defendant-appellant in an appeal arising out of a preliminary decree in a suit for accounts can put his own valuation on the memorandum and need not accept the valuation made in the plaint by the plaintiff (In this case the defendant-appellant did not question the liability but objected as to the period for which he is liable) *Kanhaiya Lal v. Seth Ram Sarup*, 44 All. 542 : 20 A L. J. 416 (1922) A I. R. 228 (All.) *approving Bholanath v. Parsottam Das*, 32 All 517 : 7 A. L. J. 546 ; *Thakur Das v. Daulat Ram*, 1926 A. I. R. 189 (Lahore).

Account suits.—*Valuation*.—Where the plaintiff in an

account suit valued the relief prayed for a certain amount and obtained a preliminary decree for accounts and the defendant thereupon filed an appeal against the whole decree, he is bound by the valuation made in the plaint. *Dhupati Srinivasa Charlu* v. *A Perindevamma*, 39 Mad. 725: 30 M. L. J. 402: 33 Ind. Cas 602 F. B. *See cases noted under section 7 paragraph* IV (f) *Supra*

Dissolution of Partnership.—In a suit for dissolution of partnership, the defendant appealed against the preliminary decree, pleading that they had no interest in the partnership, and that they sought only a declaration to that effect, held, that appellants ought to pay an *ad valorem* fee according to the amount at which the relief was valued.

Mr. Justice Tudbull said at page 522 of the report "The fact that it is now compulsory on the appellant to appeal against the preliminary decree passed in such suits, does not affect the matter of court fees in any way. Section 7 of the Court Fees Act distinctly lays down that the amount of court fees payable shall be computed in suits for accounts according to the amount at which the relief sought is valued in the plaint or the memorandum of appeal The language of the section seems to be quite plain whether the appeal be from a preliminary or a final decree It seems to me to be impossible to hold otherwise than that an *ad valorem* court fee should be paid according to the amount at which the relief sought is valued in the memorandum of appeal" *In the matter of Bholanath* v. *Parsottam Das*, 32 All. 517 7 All. L. J. 546: 6 Ind. Cas. 832.

In an appeal from a preliminary decree in a suit for dissolution of partnership and taking of accounts, the memorandum of appeal should bear *ad valorem* court fees on the valuation of the relief claimed in the plaint. A ten rupee court fee is insufficient. *Kanji Mal* v. *Panna Lal*, 15 P. L R. 1916: 7 P R. 1915: 28 Ind. Cas. 262.

But see *Chunni Lal* v. *Sheo Charan Lal Lalman*, 23 A. L. J. 725· 47 All. 756: 1925 A. I. R 787 (All.).

Winding up partnership.—A memorandum of appeal against a preliminary decree for winding up partnership business, need only to be stamped with a court fee of Rs Ten, the other questions relating to allowing or disallowing certain items being incidental *Ram Singh* v. *Ram Chand*, 6 P. W. R. 1920.

Execution against an Alleged Partner.—An appeal against an order refusing execution against an alleged partner of a firm is an appeal from a decree (order 21, rule 52 (2) and should be stamped with court fees calculated *ad valorem* on the claim, there being no notification under section 35 reducing the court

fees *Valliappa Chetty* v *Rangaswamy Naicker*, 8 L. B. R. 300 35 Ind Cas 429.

See also other cases under Section 7 IV (f) *supra*.

Award.—*Application to file an Award* —See sections 89 and 104 C P. C. (V of 1908) and Schedule II of that Act

Where an award was made on a reference to arbitration without intervention of Court and a decree was made that the plaintiff is entitled to a certain sum as awarded by the arbitration ; held, that the order directing such an award to be filed has the force of a decree and consequently the memorandum of appeal ought to bear *ad valorem* court fees calculated on the amount decreed as provided by Schedule 1, Art. 1 of the Court Fees Act *Hari Mohan Singh* v. *Kali Prosad Chaliha*, 33 Cal 11, followed in *Maganlal Gopaldas* v. *Lalchand Hirachand*, 9 Bom L R 259 ; *Khulam Khan* v *Muhammad Hassan*, 29 Cal. 167 P. C , *Wolee Alum* v *Bibee Misrun*, 3 B. L. R. Ap. 104 : 12 W R. 50 ; *Daya Nand* v. *Bhaktawar Singh*, 5 All. 333 : 3 All. W. N. 56 , *Janki Tewari* v. *Gagan Tewari*, 3 All. 427. But see *Lurkhur Choubey* v. *Ram Bhajan Choubey*, (1903), 23 All W N 214 ; *Bhagat Ram* v. *Paras Ram*, 84 P. R. 1907 : 184 P L R 1908. In both these cases it was held that ten rupees court fee is payable under Art. 17, Clause IV of the Second Schedule of the Court Fees Act and not *ad valorem*.

But if the appeal embodied a prayer which cannot be valued then the appeal comes under article 17, clause VI, schedule II of the Court Fees Act, and Rs 10 is payable. *Ram Jawaya* v. *Debi Ditta Mal*, 107 P. W R. 1916 · 117 P. R. 1916 : 34 Ind. Cas. 192

Court fees payable on a memorandum of appeal against a decree passed on reference under schedule II Rules C. P. C., is *ad valorem* on the value of the appeal. *Gouri Shanker* v. *Ananta Ram*, 1926 A I. R. 403 (Lah.) ; 94 I. C. 646.

An Application to the 1st Court.—An application to the 1st court to file an award is liable to be stamped with an 8 annas court fee as on an application. *Lala Dharam Das* v. *Ajudhia Pershad*, 70 P. R. 1881.

An appeal against the decree of the trial court over-ruling the plea of the defendant that other members of the family are also interested, require a court fee of rupees ten on the memorandum of appeal under art. 17, VI, schedule II of the Court Fees Act. *Kripal Singh* v. *Sant Singh*, 71 P. R. 1911 : 13 Ind. Cas 305.

Civil Procedure Code.—Where a person obstructed the execution of a decree and a decree was passed against him under section 330 C. P. C.: in an appeal by him the memorandum

must be stamped with an *ad valorem duty*. *Balasundra Mudelly* v *Raja Lingam Chettier*, 29 Mad. 172.

Section 331--Memoranda of appeals from decisions passed under section 331 (order 21, rule 99), C. P. C. are chargeable with full court fees stamp as in the case of appeals from decrees. *Mahbuban* v. *Umrao Begum*, 8 Cal. 720 : 11 C. L. R. 98.

Section 332B C. P. C.—See 3rd schedule to the Code of Civil Procedure (Act V of 1908).

Under paragraph 16 of that schedule as decisions regarding the extent of liability of judgment-debtor to a claim preferred against him, must be stamped with *ad valorem* court fees as an appeal from a decree. *Ahmadkhan* v. *Madho Das*, 7 All. 565: (1885) 4 All. W. N. 99.

Ord. 41, Rule 33.—The powers conferred on Court by Order 41 Rule 33 should be cautiously exercised and should not be permitted to be invoked in favour of a litigant so as to enable him to evade the provisions of other statutes *e.g.*, the Limitation Act and the Court Fees Act. *Akimannessa* v. *Bepin Behary*, 33 C L J. 397 ; *Anango Mohan* v. *Bijoy Chandra*, 33 C. L J. 394.

Appeal as to part—Cross objection not filed.—Where the plaintiff has obtained a decree for a portion of his claim and has appealed for relief in respect of the remainder, the defendant, who has not taken statutory steps to assail the decree in so far as it is adverse to him, should not be allowed to contend that not only the appeal by the plaintiff but the entire suit should be dismissed. *Akimannessa* v. *Bepin Behary*, 33 C. L. J. 397 (399).

Cost. —Court fees are not payable on costs as costs are not subject matters of suit. *Doorga Das Chowdhury* v. *Romanath Choudhury*, 8 M. I. A. 262, *i.e.*, it being in the discretion of the court to grant or not to grant it. *Nilmadhab Das* v. *Bishumbhar Das*, 13 M. I. A. 85 (103) : 3 B. L. R. 27 P. C. Where relief as to costs form a distnict and independent ground in the memorandum the court fee *ad valorem* on costs is payable on the value of such distinct relief. *In re Makki*, 19 Mad. 350: 4 M. L. J. 148. *Kewal Singh* v. *Makrand Singh*, 12 O. C. 171 . 3 I. C. 584. Where an appeal as to costs is distinct and separate from other parts of the appeal, court fees must be paid *ad valorem* on the costs in dispute. *T. K Rawlins* v. *Lachmi Narain*, 3 Pat. L. J. 443: (1918) Pat. C. W. N. 264 : 44 Ind. Cas. 50 ; *Debendra Mohan Rai* v. *Sona Kuar*, 21 All. W. N. 21 ; *Krishnaji* v. *Babaji*, 1891, P. J. 52.

Cross Objection.—Section 16 of the Court Fees Act having been repealed by sch. v. of the Code of Civil Procedure (Act V

of 1908) the court fees necessary must be paid at the time of filing the cross objection.

To be stamped in the same way as an appeal.—Cross objection must be stamped as a memorandum of appeal, *Sayad Amir Saheb* v. *Sheikh Masleudin*, 40 Bom. 541. (Suit under section 92 C. P. C.).

The memorandum of cross objection stands in the same position, for some purposes at least, as a memorandum of appeal under art. 1, schedule 1 of the Court Fees Act as amended by Act V of 1908, and the court fees must be paid in the same manner as on a memorandum of appeal. Although the appellant may have paid more than adequate court fees on the memorandum of appeal, it is incumbent on the respondent to value the memorandum of cross-objection. *Secretary of State for India* v. *Digambar Nando*, 27 C. L. J. 443 45 Ind Cas. 939. Under Sch. 1, Art. 1 of the Court Fees Act, 1870, a cross objection must bear *ad valorem* court fees on the value of the subject-matter. *Daroga Rout* v. *Musst Parema Kuar*, 3 Pat. L. J. 197: 4 Pat. L. W. 3-8: 45 I. C. 568: *Syed Wasi Ali* v *Jung Bahadur Singh*, 18 O. C. 121.

A cross objection must bear a court fees calculated on the value of the subject matter in dispute, but where the value is not capable of being estimated in money, the valuation placed on the cross objection by the party presenting the same must be accepted, if such valuation is not unreasonable. *Sri Rajeo Lochan Maharaj* v. *Mahant Ram Manohar Prosad*, 25 O C 275: 70 Ind. Cas. 286: 1923 A. I. R. 44 (Oudh).

Cross objection as to removal of a condition—A cross objection filed objecting to a condition precedent imposed by the decree, is to bear *ad valorem* court fees, on the amount ordered to be paid. *Ishdat Tewari* v *Tameshwar Tiwari*, 45 All. 537: 1924 A. I. R. 175 (All.) · 83 I. C. 780.

Cross objection in appeals arising out of mortgage suits—If the object in filing a cross objection be to set aside a mortgage then the memorandum is to be stamped with court fees *ad valorem* on the value of the mortgage. *Sat Deo Narain* v. *Ramayan*, 52 Ind. Cas. 1002. If the object of filing the cross objection be to set aside the decree of the lower court exempting certain mortgaged properties from sale, the memorandum of cross objection is to be stamped with a court fee calculated *ad valorem* on the value of the property and not on the mortgage amount decreed. *Khachera* v. *Kharag Singh*, 33 All. 20: 7 All. L. J. 842: 7 Ind. Cas. 315; *Kesavarappu* v *Kotta Kota*, 30 Mad. 96: 16 M. L. J. 458: F. B followed.

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Cross objection as to removal of a condition.—A cross objection filed objecting to a condition precedent imposed by the decree, is to bear *ad valorem* court fees, on the amount ordered to be paid. *Ishdat Tewari* v. *Tameshwar Tiwari*, 45 All 537 1924 A I. R. 175 (All): 83 I. C. 780.

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Cross—objection redemption suits—Cross objection in appeals arising out of redemption suits must be stamped *ad*

valorem on the amount by which the decretal amount is sought to be reduced. *Mansa Ram* v. *Umra*, 213 P. L. R. 1911 : 134 P. W. R. 1911 · 11 Ind Cas. 198.

Cross-objection in appeals arising out of Partition suits.— Under article 1, schedule I of the Court Fees Act, 1870, a party filing cross objections must pay *ad valorem* court fees according to the value or amount of the subject matter in dispute in a partition suit The High Court said that this is a hardship which can be remedied only by legislature and not by the High Court *Lakhan Singh* v. *Ram Kishen Das*, 40 All. 93 : 15 All. L J. 886 43 Ind. Cas. 179 But according to the Calcutta High Court the value of partition suit is the value of the entire property sought to be partitioned and ten rupees are paid as stamp as the subject matter is incapable of valuation ; it does not appear how it is capable of valuation when a cross objection is filed The above ruling, therefore, cannot apply to Calcutta High Court.

Cross objection as to possession.—A memorandum of cross objection claiming possession of property should be stamped *ad valorem* on the value of the property and is not to be stamped according to Section 7 para V. *Bishen Sahai* v. *Chhotey Lal*, 1925 A. I. R 119 (1) (All.) : 85 I. C. 270.

Note.—The notifications of the Government of India reducing fees would also apply to cross objections unless those notifications specially mention plaints or memoranda of appeals

Cross objection as to costs.—There is apparently no provision made in the Court Fees Act, 1870, for the case of a petition of objection by the respondent under section 561 (order 41, rule 22) of the Code of Civil Procedure where such objection relates to costs only and the appellant appeals against the whole decree. *Hasan Bano* v. *Nizaduddin*, (1893) 13 All. W. N. 55. A memorandum of cross objection filed in the High Court relating to costs only does not fall either under Art. 11 of Schedule II of the Court Fees Act or Art. 1, Schedule 1 of the same Act but is to be treated as a petition and comes under clause (d) of Article I of Schedule II of the Court Fees Act and a Court Fee of Rupees two is payable thereon. *Kamal Kamini Debi* v. *Rangpore North Bengal Bank, Ltd.*, 25 C. W. N. 934 : 64 Ind. Cas 606

Contra—A memorandum of cross objection as to costs only must be stamped *ad valorem* for the amount of costs claimed. *Ma Shin* v *Maung Shwe Hnit*, 1925 A. I. R. 145 (R.) : 85 I. C. 257. See also *Sharoda Soonduree* v. *Govind Monee*, 24 W. R. 179 ; *Babaji Hari* v. *Raja Ram*, 4 Bom. 75.

Deficiency of Court Fees in cross objections filed in the Lower Court—The High Court has an inherent power to realise

deficiency of court fees in cross objection filed by respondent in the lower appellate court, on appeal preferred by one of the defendants only, even if the appellant to the High Court may not object to that part of the decree of the lower appellate court which disallowed his cross objection *Rasik Behary Pal Chowdhury* v *Hriday Narain*, (1922), Pat C. W. N 162.

Note.—The memorandum of cross objection would be a document within the meaning of sections, 4, 6 and 28 of the Court Fees Act, and therefore section 28 of the Court Fees Act would be applicable.

Objections to Findings.—In a case where the decree was in favour of the defendant, and upon an appeal being filed by the plaintiff against that decree, the defendant filed objections to certain findings in the judgment against him and paid a court fee of 8 annas, held, that the court fee was sufficient in as much as the objections were not cross-objections within the meaning of Order 41, rule 22 of the Code of Civil Procedure and what the respondent seeking to do was to support the judgment of the lower court *Bhajan Lal* v. *Chahat Rai*, 15 All. L. J 325 39 Ind Cas 279

Where the decree of the lower Court is entirely in favour of the respondents and it totally dismissed the suit by the plaintiff, the respondents could support the decree on any ground they like, and if with that purpose they filed a petition stating grounds upon which they supported the decree, that is not a cross-objection for which an *ad valorem* court fee is payable *Ram Prosad Kalwer* v *Musst. Ajanasia*, 44 All. 577: 68 Ind Cas 861.

Petition by a respondent criticising the judgment is not a cross objection and hence not liable to stamp duty. *Shahdeo Nath Deo* v *Kusum*, I L R 1 Pat. 258.

Decree.—Where a decree is obtained against a firm and execution is refused as against the alleged partner, the memorandum of appeal is to be stamped with *ad valorem* court fee under Art 1 Schedule I of the Court Fees Act In such cases Art 11 of the Schedule II does not apply. *Valippa Chetty* v. *Rangaswamy Naicker*, 8 L. B. R. 300: 35 Ind. Cas 429

Decree with a condition.—Where a decree awards possession on condition that the plaintiff do pay all the encumbrances on the property, and the plaintiff appealed against that part of the decree which required him to pay the encumbrance, the court fee payable on the memorandum of appeal must be *ad valorem* on the amount of such encumbrances. *Kishen Dutt* v *Kasi Pandey*, 5 Pat. L. J. 455: 1 Pat. L. T. 738: 57 Ind Cas 481, *Basdeo Ram* v. *Sri Krishna Gir*, 13 O. C. 62: 5 Ind Cas 941.

The plaintiff obtained a decree for possession conditional upon the payment of a certain sum of money and on his failure to pay that sum, the decree would be null and void. If the plaintiff files an appeal against the condition, he must stamp his memorandum of appeal with a court fee calculated upon the sum decreed by the last court. *Pirbhu* v. *Soudagar*, 53 P. R. 1884.

In a suit for possession of an area of land mortgaged by the predecessor-in-title without payment of any sum, the lower appellate court decreed the suit on condition that the plaintiff can obtain possession after payment of Rs 967 to the defendant in possession On appeal to the High Court by the plaintiff-appellant, Counsel for the respondent raised the question of court fees The High Court held, "the relief sought being the removal of this condition precedent, court fees must be paid on the amount so fixed" and followed the decision of *Wadhawa Singh* v. *Sunder Singh*, 59 Ind Cas. 667: 21 P. L. R. 1921. *Tikkan Ram* v. *Bosa Ram*, 67 Ind. Cas. 106 (Punjab).

See also *Ragha Sha* v. *Wajib Ali*, 50 Ind. Cas. 353, where it was held that as the defendants were ordered to pay and not the plaintiffs, therefore in an appeal by the plaintiff the memorandum need only be stamped with a court fee calculated *ad valorem* on five times the Government Revenue payable for the lands in dispute.

Where the appellant seeks to release their property from a charge declared by the lower court to be on the property, the memorandum of appeal should bear a court fee *ad valorem* on the charge declared *Tharu Mal* v. *Chandra Ram*, 11 P. R. 1916: 59 P W R 1916. This is also the case in case of appeals by transferees on the ground that the property having been alienated before the date of mortgage, it is not liable. *Sheoraja* v *Debi Din*, 5 O. L. J. 663: 48 Ind. Cas. 535.

Where the plaintiff sued for recovery of mortgage money by a sale of two properties but the trial court ordered that one of the properties be proceeded with first and if the proceeds do not satisfy the decree then the second property be sold. *Held*, that as regards the condition the memorandum of appeal is to be stamped with a court fee of rupees 10 plus *ad valorem* court fees on the amount disallowed *Ujagar Lal* v. *Mohan Kuar*, (1886), 6 All. W. N. 312.

Alienation by manager.—Where the plaintiff—a member of a joint Hindu family—, sued for possession of half share of the family property alleging the same to have been improperly alienated by the manager, and the trial court decreed the suit on condition of the plaintiff paying Rs 12,000 to the alienee defendant, the defendant preferred an appeal claiming that

the entire suit should have been dismissed in toto, held that the appellant was bound to pay court fees only on the value of the lands decreed to the plaintiff, such value to be ascertained in the manner prescribed by Section 7, cl V of the Court Fees Act It was further held that if the plaintiff appealed on the ground that the amount he was ordered to pay, is too large then *ad valorem* court fees are to be paid on the amount by which he wants that amount to be reduced *Ganapati Butchi* v. *Seethajamma*, 47 M L J 919 85 I C 405

Where a suit by a son for declaration that certain alienations by the father of a family governed by the *Mitakshara* Law of inheritance would not be binding on the reversionary interest, was decreed but a portion of the consideration money was declared a charge upon the property, held that the memorandum of appeal against the declaration of charge should be stamped as a declaratory relief as the memorandum of appeal need not bear a higher court fee than the plaint. *Harbhagwan* v *Amar Singh*, 5 Lah 137 83 I C. 332.

Priority and Redemption.—A plaintiff brought a suit to recover money due on a mortgage bond by sale of the mortgaged properties, it was also prayed that as defendant No 3 had a deed of conditional sale reciting a mortgage prior to the plaintiff's mortgage, the property might be sold subject to defendant No 3's mortgage or that he might be given an opportunity to redeem The suit was decreed and the property was ordered to be sold subject to the mortgage of defendant No 3. The plaintiff appealed against the latter part of the decree, praying for its modification, "by removing the condition as to priority to the deed of defendant No. 3 and its redemption, by the appellate court." He valued the appeal for the purposes of jurisdiction at Rupees 14,00 the amount of defendant No 3's mortgage, but he paid a court fee of Rupees ten only for the declaratory relief that defendant No 3's bond had no priority of charge over his own. *Held,* that the relief sought was not declaratory, but sought to obtain an order that the property be sold free of the lien declared by the trial court; and that, therefore *ad valorem* court fees must be paid on the value of the lien which it was sought to destroy. *Premsukh Das* v. *Shah Gopi Saran*, 4 Pat L. J. 323: 51 Ind. Cas. 786.

Redemption.—In a suit for the redemption of a mortgage the plaintiff obtained a decree for redemption conditional upon payment by him of a sum fixed in the decree. The plaintiff appealed upon the ground that such sum was in excess by a specified amount of the sum righty payable by him for redemption. *Held,* that the court fees payable on memorandum of appeal was to be calculated upon the amount which the appellant claims to be deducted from the decree and not as in th

case of redemption, according to the principal sum secured by the mortgage. *Npalp Rai* v. *Devi Prosad*, (1905), 25 All. W. N. 40: 27 All. 447: 2 All. L. J. 105. Where in a foreclosure suit a decree was passed in favour of the plaintiff conditional upon his payment of rupees 5,914 6 annas 5 pies and against that decree the plaintiff wants to get rid of the condition imposed upon him by the trial court he must pay court fees *ad valorem* on the the amount he is ordered to pay. *Baji Lal* v. *Goverdhan Singh*, 31 All. 265 6 A. L. J. 155: 1 Ind. Cas. 100 see also *Moti Begum* v *Har Prosad*, 16 All. L. J. 81: 47 Ind. Cas. 311 (claim for dower charged upon property) but in *Ragha Sha* v. *Wajib Ali Shah and others*, 50 Ind. Cas 353, the Oudh Judicial Commissioner's Court held that the court fees payable in a suit for possession, is under section 7 paragraph V although the lower court may have allowed possession in the case the defendants fail to redeem.

Conditional decree in favour of reversioners.—Where the plaintiffs sued as reversioners and in the alternative prayed for redemption, and the trial court ordered redemption on payment of certain sum but the plaintiff appealed on the ground that he is not liable to pay any sum *Held*, that the memorandum of appeal should be stamped *ad valorem* on the amount he was ordered to pay *Mata Badal Singh* v. *Jai Singh*, 15 Ind. Cas 746

In a suit for possession of property where the trial court decreed the suit conditional upon plaintiff's paying a sum to the defendant and where the appeal is against that part of the decision which imposes the liability, the memorandum of appeal is to be stamped with court fees *ad valorem* on the amount from which the plaintiff-appellant seeks to escape liability. *The value of the appeal in such cases is the value of the relief* granted by the decree which the appellant wishes to get rid of. *In re Porkodi Achi*, 45 Mad. 246 68 Ind. Cas 444: 41 M. L. J 587 1921 M. W. N. 854 14 L. W. 624 (1922) A. I. R. 211 (Madras)

Other conditions.—Where the plaintiff sued as transferee of certain properties from one Musst. Gomi, and for possession and obtained a decree limited to the life time of Musst. Gomi and the plaintiff thereupon filed an appeal to the High Court to have this condition removed *Held*, that the memorandum of appeal is properly stamped with a court fee of Rupees Ten. *Rup Chand* v *Fateh Chand*, 8 All. L. J. 821.

Partial decree.—The court fees which an appellant has to pay on a memorandum of appeal from a decree which gives him only partial relief, are to be calculated upon the difference between the value of the relief which he claims and the relief granted by the decree appealed against. *Lukhun Chunder* v. *Khoda Buksh*, 19 Cal. 272.

Two preliminary decrees.—The court of first instance in a suit for redemption passed in effect two decrees. It first passed a decree declaring the plaintiff's right to redeem, which was denied by the defendants and against which the defendants filed an appeal and then while the appeal was pending, a second preliminary decree was passed deciding the amount for which redemption might take place. Against that decree the defendant also appealed. *Held,* that the two appeals are not to be regarded as separate appeals for the purpose of assessing court fees but should be counted as one as there is no warrant for the procedure adopted by the lower court in embodying in the form of a decree its decision on the question of the plaintiff's title to redeem. The court should have gone on to ascertain the amount due and then, and not till then, have passed its decree and the public are not to be penalized for no fault of theirs to pay court fees twice over. *Lalta Prosad* v. *Sheoraj Sinha*, 39 All 452; 15 A. L. J. 464.

See *contra, Raja Peary Mohan* v. *Manohur* in 27 C. W. N. 989 (991, 992) where the Calcutta High Court held, that if after passing of a preliminary decree where accounts were ordered to be taken, a further order is passed by the Court determining the period for which accounts are to be taken, such order is also a preliminary decree.

Appeals against Preliminary and Final Decrees.—Section 97 of the Code of Civil Procedure (V of 1908) does not prevent a party from filing a combined appeal against a preliminary and a final decree, if the dates permit him to do so" ... "we will permit the appellant to have a reasonable time to combine such objection, if any, he may have against the final decree in this appeal; of course, the court fees, such as may be necessary, will have to be paid." Per Scot C. J., in *Balwant Sing Ram Chandra* v. *Sakharam Mancharam*, 18 Bom. L. R. 80 (note); 33 I. C. 137; *Kanchan Mandar* v. *Kamala Prosad*, 16 C. L. J. 564; 15 Ind. Cas. 572; *Dottatraya Ramchandra Savale* v. *Ajmuddin Fakruddin*, 18 Bom. L. R. 76; 33 I. C. 146, where the system of filing appeals against preliminary decrees after the final decree was passed, was deprecated as an attempt to evade payment of stamp duty (but in this case the amount of the preliminary decree was lower than that of the final decree). There the defendant-appellant filed an appeal against the preliminary decree of a stamp of rupee ten after the passing of a final decree for a higher amount. See also *Kanhaiya Lal* v. *Tribeni Sahu*, 36 All. 532; 12 A. L. J. 876; 24 I. C. 827.

The defendant in a suit for accounts may prefer a single combined appeal against the preliminary and the final decrees if the dates permit him to do so, but in determining whether the appeal is to be regarded as an appeal against the preli-

minary or a final decree or against both, the dafes of the decrees and the valuation of the appeal are more material than the grounds of the appeal. *Damodar Padhano* v. *Haribandhu Patnaick*, 14 L. W. 389. 1921 M. W. N. 558: 70 Ind. Cas. 392 (Madras).

Where an appeal was pending from the preliminary decree it was not necessary for the mortgagee to file another appeal from the final decree. Therefore the court fees paid on the memorandum of appeal from the final decrees was ordered to be refunded *Swami Dayal* v. *Muhammad Sher Khan*, 1925 A I. R. 39 (Oudh).

Separate appeals by individual appellant when they could have preferred joint appeal.—When two out of a larger number of defendants against all of whom a decree for a certain sum had been passed, elected to present two entirely distinct and separate appeals though they were entitled to file a joint appeal. *Held*, there is no provision of law which would exempt the memorandum of appeal filed at the later date, from also bearing, as the other did, the full *ad valorem* court fee payable. *Panna Lal* v *Marwar Bank, Ld of Hissar*, 91 P R. 1918: 48 Ind. Cas 424. Where two defendants filed two separate appeals from a decree in a suit for redemption, against orders of court allowing redemption on payment to each of the defendants a moiety of the mortgage money. *Held*, that each appeal should be stamped *ad valorem* on the amount under section 7, paragraph 9 of the Court Fees Act. *Umar Khan* v. *Mahomed Khan*, 10 Bom. 41

But the Court Fees Act does not provide for consolidation of appeals. If, therefore, there were two appeals in the same suit, and then one party files two second appeals one against each decree in the first appeal, the appellant will have to pay the full court fee on each of the appeals. *Shib Dayal* v. *Meherban*, 43 All. 56. 18 All. L. J. 894: 58 Ind. Cas. 230. The High Court said. "It is a pity that one appeal cannot be filed as it seems unjust to make a man pay double court fees because under law it is necessary for him to file two separate appeals" In an appeal against a preliminary decree under section 215 A. C. P C. the appellant ought to pay *ad valorem* court fee on the amount at which the suit was valued in the plaint under section 7, iv (*c*). *Bhagat Ram* v. *Gopalchand*, 150 P. R. 1903.

Dower. —In a suit for recovery of property in the possession of a Muhammadan lady, the defendant (the lady) pleaded, *1st*, that the plaintiff had no title, and *2nd*, that she is not entitled to a decree for possession without payment to the defendant of Rupees 8,000 the amount of decree due to the defendant. The court of first instance decreed the suit for

possession, holding that payment of the defendant's dower, whatever it might amount to, was not a condition precedent to the plaintiff's obtaining a decree The defendant appealed, paying court fee on the value of the property ; on a reference by the Taxing Officer as to whether she was not liable to pay coutr fees on Rupees 8,000 as well, *held*, that the subject-matter in dispute in the appeal was the property of which possession is sought and the court fee paid was sufficient Mr Justice Tudball said. "In my view it seemed to me impossible to hold that the amount or value of the subject-matter of the appeal is anything more than the value of the property which the plaintiff is seeking to recover and which the defendant is seeking to retain." *Haidari Begum v. Gulzar Bano*, 36 All. 322· 12 A L. J 481· 25 Ind. Cas 395 See also *Moti Begum* v. *Har Prasad*, 47 Ind Cas. 311: 16 All L J 81.

Ejectment and Mesne profits.—A memorandum of appeal from a decree directing an ejectment and awarding mesne profits is chargeable with court fees calculated both on the land and on the mesne profits allowed, which are the subject-matter of appeal. *Brahmayya* v. *Lakshinarain*, 16 Mad 310

Foreclosure.—See under Redemption and under Section 7 IX See the case of *Jagatdhar Narain* v. *Brown*, 33 Cal. 1133: 10 C W N 1010: 4 C. L J. 121 which says the valuation must be on the purchase-money in a suit against purchaser of the equity of redemption

Grounds of appeal going to the root of the whole of the respondent's case.—Where one of several appellants take a ground of appeal, which goes to the root of the respondent's case, and which if successful, would deprive the respondent of his decree as a whole and not merely of his interest in it *quod* the particular appellant, the appellate court is justified in refusing to hear the appeal on such ground as aforesaid unless he pays a court fee sufficient to cover the whole relief obtainable on such grounds of appeal *Bujhawan Rai* v *Mukund Lal*, 15 All 112. 12 All W. N 248.

Limitation—Where the plea of limitation involves dismissal of suit and the appellant fails to pay the court fees on the entire claim within the period prescribed for an appeal, the appellate court cannot give him the advantage of limitation, as the law is, that where a suit ought to be dismissed in *toto* as time barred, the defendant must appeal on the whole and not on any particular portion of it *Hukum Singh* v. *Shahab Din*, 14 P. W R. 1918: 44 Ind Cas 890.

Misjoinder—When the plaintiff brought one suit for sale upon several mortgages against several defendants and a decree was passed in their favour, some of the defendants who

were liable to pay a part only of the decretal amount appealed on the ground that the suit is bad for misjoinder of parties. *Held,* this ground went to the root of the whole of the respondent's case and *ad valorem* court fee on the entire decree was payable. *Dilwar Husain* v. *Bhagwat Das,* 4 All. L. J. 130: 27 All W N 63.

Hypothecation.—Where the trial court in a suit on a hypothecation bond exonerated the 2nd defendant but passed a decree against the 1st defendant for the whole amount. *Held* that the plaintiff in appealing against the decree with a view to make the 2nd defendant who was made the sole respondent, liable, must stamp the memorandum *ad valorem* on the amount sought to be recovered, *Ramasami* v. *Subbusami,* 13 Mad. 508.

Interest.—*The appellant is not liable to pay court fees* on the amount of interest from the date of grace up to the date of the hearing of the appeal. *Bhagwati Prashad Singh* v. *Bishun Narain,* (1922) Pat. C. W. N. 386; 6 P. L. J. 676; 3 P. L T 310.

When a mortgage suit is dismissed the plaintiff is entitled to value his appeal at the sum claimed in the plaint in respect of principal and interest up to the date of filing the plaint and is not bound to value the future interest which he may claim from the date of the suit up to the date of realisation or to pay court fees thereon, but if any future interest is determined by the trial court and is entered in the decree then the plaintiff on appeal by the defendant, is bound to pay additional court fees on the sum of interest so added in the decree as having accrued from the date of suit up to the date of preparation of the decree in the lower court." *Kali Prasad Singh and others* v. *Mathura Singh and others,* 77 Ind. Cas. 1054; 1923 A. I. R. 28 (Patna).

Although future interest is not to be taken into account, still in all appeals from original decrees, the court fee is to be calculated on the sum due at the date of passing the original decree and in all second appeals it should be levied on the sum due at the date of the decree of the lower appellate court and in all cross-objections when these can be ascertained by reference to the judgment and the decree, it is at that amount at which appeals or cross objections are to be valued. *Rawlins* v. *Lachmi Narain Jha,* 3 P. L. J. 443: (1918) Pat. C. W. N. 264 44 Ind. Cas. 50; *Bhagwati Prasad Singh* v. *Bishun Pragash Narain,* 6 P. L. J. 676; 1922 Pat. C. W. N. 386; 3 P. L. T. 310; *Raghubir Prasad* v. *Shanker Bux Singh,* 36 All. 40 · 11 All. L. J. 1016: 21 Ind. Cas. 723.

In appeals relating to future interest, the proper court fee is an *ad valorem* fee on the amount of interest claimed up·to

the date of presentation of appeal. *Gobardhan Das* v. *Narendra Bahadur Singh*, 22 O. C. I. 50 Ind. Cas. 798.

In an appeal from a decree awarding future interest, the interest accruing subsequent to suit need not be included. *Srinivas Row* v. *Ramaswami Chetti*, 10 M. L. J 144. See also, *Reference under the Court Fees Act*, 29 Mad. 267: 16 M. L. J. 287

No additional stamp is required on account of claims for interest form the date of institution of the suit until payment, *Vithal Hari Athvale* v. *Vasudev Thosar*, 18 Bom. 41, the reason being none are payable for future mesne profits, but in *Dwarka* v. *Devendra*, 33 Cal. 1232, it has been held that there is no analogy between future mesne profits and future interest, the latter being penal in its nature and is no part of the claim or relief granted as in the case of mesne profits. The proper court fees payable on memorandum of appeal claiming interest up to the realization of mortgage money is Rupees ten under Art. 17 vi. of the second schedule of the Court Fees Act *Bhawani Prasad* v *Kutubunnissa Bibi*, 27 All. 559 2 All. L J. 363 25 (1905) A W N 84 *Ram Bujhawan Prasad* v. *Natho Ram*, 1922 Pat C W N 59; 3 P L. T 146

Where the appellate court awarded additional interest over and above the sum awarded by the trial court, *held*, the memorandum of appeal ought to bear *ad valorem* court fees on the amount of interest awarded *Jamna Bai* v *Ramtahal Raut*, I. L. R 1 Pat. 19, 1922 Pat. C W N 387, 77 Ind Cas. 1039

In an appeal from order in execution of a decree where future interest is awarded—the memorandum is to be stamped with an *ad valorem* court fees on the amount calculated on the difference between the amount awarded under the decree (on which court fees were paid) and the amount claimed in the appellate court up to the date of the appellate decree. *Tarapada Mitter* v *Rani Jagadamba*, 5 Pat L. J 235; (the arguments proceeded upon the grounds that s 47 (2) is entirely new, but subsequent Notification No. 1872J published in *Calcutta Gazette*, dated 1st June, 1921, speaks of Section 47 instead of Section 244 (c) consequently this decision has now no force, so far as Bengal is concerned See similar Notification for Patna in the Appendix

Instalment Decree.—When the lower court ordered that the decretal amount be paid in three instalments, held that the court fees should be calculated upon the difference between the amount claimed in the court below and the sum of the present values of the three instalments payable on the dates

mentioned in the decree reckoning interest at the rate allowed. *Lukhun Chunder Ash* v. *Khoda Buksh Mondul*, 19 Cal. 272.

The memorandum of an appeal by the decree-holder from a decree for money allowing payment by instalments, must be stamped on the difference between the amount claimed in appeal and the amount decreed and also on the difference to the appellant between getting his money on the date of the decree under appeal and getting it by instalments as ordered. *Lala Govind Lal* v. *Rao Baldeo Singh*, 12 P. W. R. 1914: 226 P. L. R. 1914: 24 Ind Cas. 931. But if the decree be, that on the defendant furnishing security the decretal amount will be payable by instalments then the memorandmu of appeal is to be stamped with a court fee of rupees ten under article 17, clause vi, schedule II of the Court Fees Act as the subject-matter cannot be valued because all that they ask is that they may be allowed to satisfy the debt in a particular way. *Beharilal* v *Seth Nanhe Lal*, 14 C. P. L. R. 172.

Inter-pleader suit.—In an appeal from a decision in an inter-pleader suit in respect of money, the court fee payable is rupees ten under article 17, clause vi of schedule II of the Court Fees Act and not an *ad valorem fee* calculated under Section 7 (vi) (c) of the Court Fees Act. *Brij Narain* v. *Balmiki Prosad*, 61 Ind Cas 820 · Pat. L. T. 280.

Landlord and tenant.—See also under "Landlord and Tenant" *supra*. The perpetual (mourashi) character of the plaintiff's lease under which the claim was having been disallowed, an appeal was preferred to have it declared that the lease was perpetual *Held*, as the value of the claim would be the difference in the value of the land as held under a mourashi tenure at a fixed rent and an extremely difficult calculation, the stamp upon the memorandum of appeal would be properly fixed according to the valuation put by the appellant upon the subject-matter of the claim. *Kebal Ram Mundal* v. *W S Wells* 24 W. R. 454

Where a suit is decreed against defendant by the lower court, that he do pay to the plaintiff rent for certain (Fasli) years at the rate of 2½ per cent on the gross revenue of the zemindary and the determination of the amount was reserved for execution proceedings; an appeal from that decree is capable of being valued and the appellant is to value the appeal under Section 7—iv. (f) of the Court Fees Act. *Reference under the Court Fees Act*, 4 M. L. J. 12.

Mesne profits.—In an appeal from a decree directing ejectment and mesne profits, the court fee should be calculated on the land and on the mesne profits, both being subject-matter of the appeal. *Brahmayya* v. *Lakshmi Narasimham*, 16 Mad.,

310. And improvements by tenant are not to be taken into account, *Reference under the Court Fees Act*, 23 Mad 84.

A memorandum of appeal from an order dismissing an application for ascertainment of mesne profits must be stamped with an *ad valorem* stamp on the amount claimed. It is doubtful whether an appellate court has power to allow a party to reduce the claim in order to relieve him from liability to pay proper court fees *Narain Prasad* v *Sheo Kameshar Prosad Singh*, 3 Pat. L J 101.

A suit for recovery of possession of land and mesne profits which was valued at the value of the land *plus* the amount of antecedent mesne profits was decreed in its entirety, but the court did not ascertain the amount of mesne profits The defendant appealed, challenging the whole decree. *Held*, that the appeal must be valued at the same valuation as the suit and must bear the same court fee stamp *Manick Chand Ram* v *Bibi Najiban*, 49 Ind. Cas 962 (Patna).

Valuation of appeal—See under s. 11 of this Act

Where a suit for possession with mesne profits was decreed and an appeal was preferred to the High Court on payment of full court fees and afterwards on investigation as to the amount of mesne profits it was found to be much less than the amount in claim, an appeal was filed before the District Judge and on a further appeal to the High Court an objection was raised that the memorandum of appeal to the High Court should have been stamped *ad valorem*, held, that full court fees having been paid on the appeal to the High Court the memorandum of appeal to the District Judge was sufficiently stamped with a court fee of 8 annas *Ram Mander* v *Maharani Nowlakhbati*, 3 Pat 815

Money appeals against defendants exonerated.—The plaintiff sued for money, several persons as defendants but obtained a decree against only one of them, and then appealed against other defendants on the ground that the decree should have been passed against all of them jointly *Held*, that the memorandum of appeal should be stamped with court fees calculated *ad valorem* on the amount of the decree under Art 1, schedule 1 of the Court Fees Act and not with a stamp of Rupees Ten *Amirchand* v *Kanhaiya Ram*, 225 P. W. R. 1912 · 86 P. R. 1912. 222 P L R 1912: 16 Ind Cas 777. See also *Ram Kishan* v *Hirde Ram*, 1923 A I. R. 135 (Lahore).

Where the plaintiff sued several defendants for recovery of money but obtained a decree against one of them, and thereafter he filed an appeal seeking a decree against the rest of the

defendants; the appeal must be valued on the original claim and court fees paid on the amount of the memorandum of appeal. *Anna Narayan Pavji* v *Madhyama Sthitila Paraspara*, etc. 46 Bom. 840 24 Bom. L. R. 313: 67 Ind. Cas 364: (1922) A. I. R 172 (Bom)

See also *Ramasami* v. *Subbusami*, 13 Mad. 508.

Mortgage.—*In an ordinary suit for sale, the value of* the subject-matter of appeal is the amount which the court below has declared to be due to the plaintiff on the date fixed for payment and the court fee payable is *ad valorem* on that amount *Baldeo Singh* v. *Kalka Prasad*, 35 All. 94: 11 All. L J 20; *Husaini Khanum* v *Husain Khan*, 29 All. 471: (1907) 27 A. W N. 133: 4 All L. J. 175.

Where the appellant seeks to establish that he is not liable to pay money adjudged by the lower court to be due from him, he is to stamp his memorandum of appeal with *ad valorem* court fee calculated on the decretal amount. *Mardan Singh* v. *Sheoroj Narain Sinha*, 30 Ind. Cas 322.

Separate liabilities of different properties.

Where the decree appealed against declares separate liabilities of different properties.—In a suit for sale on a mortgage, a decree was passed declaring separate liabilities of the different properties mortgaged. One of the defendants whose property was held liable for specific sum of money appealed. *Held*, that the proper court fee payable on the memorandum of appeal was a fee calculated on the sum of money for which the defendant's property was held liable and not one calculated on the full amount of the decree. In the reason given in the judgment it was said "if they succeed in this appeal, it is only those properties which will be released from the operation of the decree and it is only those sums which the decree-holder will lose." *Chhabraji Kunwar and others* v. *Court of Wards*, 35 All. 92: 11 All L. J. 33: 18 Ind. Cas. 577.

Where the question whether the properties are liable to be sold for the decretal amount and where liability of some of the mortgaged properties are in question.—Where in an appeal the amount decreed is not in dispute but the appellant disputes the liability of certain propertes to be sold for the mortgage decree, and claim that the sub-judge should have held that the mortgage was not operative and binding against the appealing defendants so far as their shares in the mortgaged properties were concerned, the High Court held that the memorandum of appeal ought to be stamped with a court fee calculated *ad valorem* on the value of these properties, *Jugal Singh* v. *Parbhu Narain*, 37 Cal. 914; *Pandit Sukh Nandan* v. *Lachman Prosad*, 17 O. C. 90: 24 Ind. Cas. 286.

If the subject-matter of the appeal be whether certain properties are liable to be sold for the decretal amount and there is no dispute as to the amount in claim, then the court fee is to be paid on the debt not exceeding the value of the property. *Venkappa* v. *Narasimha*, 10 Mad. 187, *Kesavarappu Ram Krishna Reddi* v *Kottakota Reddi*, 30 Mad 96. 16 M. L. J. 458 1 M. L T. 311 F B., *Tharu Mal* v. *Chandan Ram*, 11 P. R. 1916. 59 P W. R. 1916 33 Ind Cas. 138.

Where the appellant's appeal was against so much of the decree as rendered his property liable and sought that his property should be released from the effects of the decree, the proper stamp to be paid was an *ad valorem* fee on the value of the property not exceeding the value of the decree *Atma Singh* v *Nathu Mal and others*, 96 I. C 473; 1926 A I. R. 408 (Lah.).

Appeal for declaration of a lien.—Where the mortgagee appeals on the ground that the lien be declared, the valuation for the purpose of stamp in such appeal would be with reference to the value of the lien and not to the value of the mortgaged properties *Mahomed Sheorum Khan* v. *Koondan Lal*, Agra F B 158

Order under Order 34 Rule 5 (order absolute).—An application for an order absolute is an order in continuation of the original suit hence Section 244 C P C is inapplicable and the appeal lies under Section 540 C P C. as an appeal from an original decree *Manmatha Nath Ray* v *Khetra Mohan Ghosh*, 29 Cal 651. An appeal from the final decree passed under order 34, rule 5 C P C (order absolute) requires *ad valorem* fees on the amount decreed and cannot be stamped as an appeal from order *Bajrangi Lal* v *Mahabir Kunwar*, F B 35 All. 476 11 A L J 80 21 Ind. Cas 498 See also *Tajammal Husain Khan* v *Muhammad Husain Khan*, 14 A L J 328 35 Ind Cas 158, *Jankibai Ramdayal* v *Chimna Sadashiv*, 22 Bom L. R. 811 57 Ind Cas. 579, *Asghar Ali* v. *Mahabir and another*, 1925 A I R 102 (Oudh).

Ad valorem court fee should be paid on a memorandum of appeal from an application for an order absolute under Section 89 (order 34 rule 5 C P C.) of the Transfer of Property Act. *Charu Chandra Mitter* v. *Bhagirath Persad*, 12 C W.N. 1928. See also *Bechu Singh* v *Bhagirath Persad*, 12 C W. N. 1928. See also *Bechu Singh* v *Becharam Sahu*, 10 C L J. 91 (appeal by J D); *Bibi Barkatunnissa Begum* v *Bibi Quammarunnissa*, 50 Ind. Cas. 279 See *contra* *Balmukund* v. *Haji Husanali Bohra*, 14 C P L R. 100.

Orders under order 34 rule 6 C P. C. (Personal decree).—An order on an application for a decree under order 34 rule 6 C. P. C.

is a 'decree' as that term is defined in the Code. An appeal, therefore, from such an order must bear ad valorem court fee stamp and not merely a two rupees stamp. *Muhammad Iltifat Hussain* v. *Altmunnissa Bibi*, 40 All. 553: 47 Ind. Cas. 561. *Tajammal Hassain Khan* v *Muhammad Hussain Khan*, 14 All. L. J. 328· 35 Ind Cas. 158. *Bindhiachal Rai* v. *Sitaram Misir*, 74 Ind. Cas 21 (All). In appeal against an order under order 34, rule 6 of the Code of Civil Procedure the memorandum is to be stamped with *ad valorem* court fees. *Ayyakutti Mankondan*, 30 Ind Cas. 497: *Saiyed Wasi Ali* v. *Jung Bahadur Singh*, 18 O. C. 121. See also *Lakhi Narain Jagdeb* v. *Choudhury Kirtibas Das*, 18 C. L J. 133 (appeal by J. D.)

Possession of Property.—A suit for possession of a house was decreed conditional upon the payment of the value of the improvement On appeal it was held that the value should be on the market value under section 7 V. (e) of the Court Fees Act and (as rules are framed in the Punjab under Section 9 of the Suits Valuation Act) the valuation for the purpose of court fees and for jurisdiction shall be the same. *Abdur Rahaman* v. *Cheragdin*, 19 P. R. 1908; 129 P. L. R. 1908: 38 P. W. R 1908.

A Hindu sued to recover his half share of the ancestral estate from the defendants. The suit was decreed conditional upon payment of a sum of money. The defendants filed an appeal to get rid of the decree for possession passed against him and did not seek to increase the amount to be paid to him; *held*, that the subject-matter of the appeal is the land itself and as the appellant is asking to get rid of the decree against him, which has given the respondent the right to recover possession of the land from him, the case falls under section 7 paragraph v (in various clauses) of the Court Fees Act for the purpose of court fees and valuation. *In re Sethayamma*, 48 Mad. 652.

Pre-emption.—See under Section 7 paragraph vi. Where in an appeal, the appellants ask the court to reduce the amount payable by them under the decree appealed against, by a certain figure, that sum represents the value of the subject-matter of the appeal and it is upon that sum that they must pay *ad valorem* court fees as specified in Art. 1 schedule 1 of the Court Fees Act, but if the appellants pray that the plaintiff is not entitled to the land in suit, court fee to be affixed to the memorandum of appeal is to be computed in accordance with the provisions of section 7, paragraph 6 of the Court Fees Act. *Waryam Singh* v. *Mahtab Singh*, *F. B.* 19 Ind. 961: 240 P. L. R. 1913: 141 P. W. R. 1913: 76 P. R. 1913. Five villages were transferred by means of one sale deed, the consideration

set forth in the deed being Rupees 44,000. In respect of this transaction a suit for pre-emption was brought, but the plaintiff alleged that the true consideration was Rupees 2,500 only. As to two of the villages the suit was decreed, on payment of Rupees 21,000 which was found to be proportional part of Rupees 44,000 the value for all the villages; as to the other three villages the suit was dismissed. The plaintiff appealed (a) as to the price to be paid for those two villages in respect of which the decree was in his favour and (b) in respect of the disallowance of his claim to pre-empt the other three villages. A question having arisen as to the proper court fees payable in this appeal, it was *held*, that the appeal being divisible into two clear and distinct parts, in respect of part (a) the appellant should pay *ad valorem* court fees on the difference between 21/44 of Rupees 2,500 and Rupees 21,000, while in respect of (b) the appellant should pay court fees calculated according to Section 7 vi of the Court Fees Act, 1870, on five times the Government Revenue of the three villages claimed. *Abinash Chandra* v *Shekhar Chand*, 40 All 335: 16 All. L. J. 174 44 Ind Cas. 666.

Redemption.—See also under Section 7, paragraph ix. pages 120 to 124 *supra* In cases of appeals or cross objections in suits for redemption in which the amount is declared by the court to be due at the date of the decree can be ascertained by reference to the judgment and the decree, it is that amount at which the appeal and the cross objection should be valued and future interest should not be taken into account *Raghubir Prosad* v *Shankar Baksh Singh*, 36 All 40 17 All L J 1016 21 Ind. Cas 723, *modifying Baldeo Singh* v *Kalka Prosad*, 35 All 94, where the High Court held that in an appeal from decree for sale on a mortgage which declared that where on the date fixed for payment a specified sum would be found due from the mortgagor, which included interest *pendente lite*, the court fee is to be paid on that amount

Appeal as to the amount payable.—Where the mortgagor-appellant appeals on the ground that he is not liable to pay money adjudged to be due to the mortgagee, his memorandum of appeal is to be stamped with a court fee *ad valorem* on the amount by which he asks the appeal court to vary the decree. *Mardan Singh* v. *Sheoraj Singh*, 30 Ind Cas 323. In an appeal arising out a redemption suit, the court fees payable on the memorandum of appeal is *ad valorem* on the amount by which the mortgage money was sought to be reduced *Lekh Ram* v *Ramji Ram*, 1 Lahore 234 · 57 Ind Cas. 215; 3 L. L. J. 370; 144 P. L R 1920

Where in a suit for redemption the trial court ordered re-

demption on payment of Rs. 39,340-11-7 and the plaintiff having paid that amount together with interest which accrued due later, the trial court passed a final decree. The plaintiff filed two appeals against the two decrees for reduction of the decretal amount by Rs. 32,225-11-7. The High Court held that full court fees having been paid on the memorandum of appeal against the preliminary decree the memorandum of appeal against the final decree is sufficiently stamped if it bears a court fee of Rs. 2. *Bhuddu Ram* v. *Niamat Rai and others*, 1923 A I R. 632 (Lahore).

Ad valorem court fees must be paid on the amount by which the mortgage decree in a redemption suit is sought to be reduced. *Ramji Lal* v. *Shibba Ram and others*, 1923 A. I. R 309 · 75 Ind. Cas 667 (Lahore).

Where the mortgagee appellant claims a larger amount than that awarded by the decree appealed against, court fees must be paid *ad valorem* on the amount claimed in excess *Sant Baksh Singh* v *Sheikh Dildar Hossein*, 74 Ind. Cas. 88: 1924 A I R 170 (Oudh) 30: 67 Ind. Cas. 968: (1922) All. I R 82 (Oudh).

Appeal against a decree allowing redemption on payment of a certain sum should bear *ad valorem* court fees on the amount of the principal sum under Section 7 ix of the Court Fees Act *Fateh Singh* v. *Babu Ram*, 3 L L J. 156.

Appeal as to the right to redeem.—In a suit for redemption or foreclosure, where the question arose as to the right to redeem or foreclose for an adjudged sum, the court fees payable will be according to Section 7 ix, *i.e.*, according to the principal amount secured by the instrument, but if the appellant challenges the amount payable, the fee will be paid *ad valorem* calculated on the difference between the sum awarded in the lower court and that mentioned in the memorandum of appeal as due *Gumani* v. *Banwari*, 22 O. C. 289: 54 Ind. Cas. 733. See also *Sangat Baksh Singh* v. *Rawat Dijdeo Baksh Singh*, (1922) A I R. 82 (Oudh): 25 O. C. 30 · 67 Ind. Cas 968.

In a suit to redeem a *kanom*, a decree for redemption was passed The defendants appealed against the decree on the ground that the plaintiffs are not entitled to redeem and if they are held to be so entitled they can do it only on payment of a higher sum, which amount was not stated in the memorandum of appeal and no court fees paid in respect of the higher amount. *Held*, that the memorandum of appeal came under article 1, schedule 1 and Section 7 ix of the Court Fees Act and the memorandum of appeal is to be stamped with a court fee calculated on the principal amount secured and is the same as that paid on the plaint. In a redemption suit the subject-

matter of the suit is the existence of the right to redeem and any question as to the condition of redemption is only incidental to that right *Sekharan Nair* v *Eacharan Nair*, 6 M. L. T. 245 20 M L. J. 120: 3 Ind Cas. 459.

Where the lower court decreed the plaintiff's claim for redemption as to the amount but only in respect of a quarter of the mortgaged property, the plaintiff filed an appeal regarding the other ¾ of the property which he claimed *Held*, that the memorandum of appeal is to be stamped with a court fee *ad valorem* calculated on the principal amount secured. *Ghasiram* v *Liladhar*, 9 N L R 86: 20 Ind Cas. 257

Suit for possession in the alternative for redemption—In such suits if the court orders that the plaintiff can redeem on payment of a certain sum, the memorandum of appeal is to be stamped *ad valorem* calculated on that sum, *Mata Badal Singh* v *Jai Singh*, 15 Ind Cas 745, *Wadhawa Singh* v *Sunder Singh*, 59 Ind Cas 667, 21 P W R 1921

Redemption suit—extension of time—Where the appeal relates to the further time granted for redemption after the expiry of the original time granted, the memorandum of appeal need only be stamped with a court fee of rupees ten only. *Dadnoo* v *Somnath*, 7 N L. R 41

Redemption of mortgage by one, not a party to the mortgage.—Where the plaintiff, a Mahomedan lady, sued to redeem a mortgage of her property inherited by her from her father, in spite of the sale of the property by her mother and one of her brothers for their personal debts as their own property, and the plaintiff did not claim through the mother or the brother, *held*, that the memorandum of appeal is sufficiently stamped with a court fee of Rs 10, *Musst Imaman* v *Lalta Baksh*, 7 N W P 343

Redemption and improvements—In a suit for redemption of a kanom, the plaintiff obtained a decree for possession subject to the payment of the kanom amount and the value of the improvements The plaintiff appealed against the award of the value of the improvements, *held*, that court fees *ad valorem* on the value of the improvements are to be paid on the value of the improvements *Tiruvangalath Nellyoton Paidal Nayar and others* v *Emperor*, 1926 M W N 169, 92 I C 624, 1926 A I R 225 (Mad)

Rejection of plaint.—An appeal against an order rejecting a plaint for non-payment of court fees must bear *ad valorem* court fees as the order rejecting the plaint is a decree. *Musst Sado Kuar* v *Buta Singh*, 265 P L R 1914 · 80 P. R. 1914; 167 P W R 1914; *Shahu* v *Bakri*, 3 L. L. J. 237. See also *Rakhal Chandra Ghosh* v *Ashutosh Ghosh*, 17 C. W. N. 807 (808)

In Kossella Koer v. *Beharee Patuk* (1869) 12 W. R. 70, it was held by the Calcutta High Court that an appeal from an order rejecting a plaint is an appeal from order and is to be valued and stamped as such, but the words "or from an order rejecting a plaint," in article 11, schedule 11 of the Court Fees Act, having been repealed by Section 155 and schedule 4 of the Code Civil Procedure (Act V or 1908) and an order rejecting a plaint having been included in the definition of a "decree in the Code of Civil Procedure, this is no longer good law.

Specific Performance.—Where the plaintiff sued for specific performance of a contract by landlord to grant a lease of some lands at an annual rental of Rs 32 but the valuation for the purpose for jurisdiction was made at Rs. 1,200. *Held* that the memorandum of second appeal was correctly stamped *ad valorem* calculated at Rs. 32 under Section 7, paragraph x (c) of the Court Fees Act and the valuation for the purpose of jurisdiction and court fees consequently should be Rs. 32. *Sailendra Nath Mitra* v. *Ram Chandra Pal*, 25 C. W. N. 768: 34 C L J 94: 66 Ind. Cas 268.

Set-off.—A written statement containing a set-off must be stamped as a plaint in a suit. *Amir Zama* v. *Nathu Mal*, 8 All 396; (1886) A. W. N. 159. *Bai Shri Majirajbai* v. *Narotan Horgovan*, 13 Bom. 672; *Chenappa* v. *Raghunath*, 15 Mad. 29, 1 M L J 598.

Ad Valorem court fees are to be paid on the amount claimed as set-off even if that amount exceeds the claim of the plaintiff made in the plaint. *Chhakkan Lal* v *Kanhaiya Lal*, 45 All 218; 20 All L. J 1005, 69 Ind. Cas 921, (1923) All. I. R. 118 (Allahabad) *Budhoo Lal* v. *Mewa Lal*, 19 A. L. J. 558 F B

A plea of set off is quite distinct from a plea of payment and should not be entertained without payment of proper court fees in respect of it by the defendant *Muhammad Raza* v. *Kubura Bibi*, 15 Ind. Cas 526

Where in a written statement the defendant pleaded a set-off, within the meaning of article 1, schedule 1 of the Court Fees Act but omitted to pay the requisite court fees, the court can neither go into the question of set-off, nor make an order for payment of additional court fees, as no court fees at all have been paid *Mathu Emlappa Pillay* v. *Vunuku Thathayya Maistry*, 36 Ind. Cas. 957.

What is a Set-off?—See order 8 rules 6 and 7 C. P. C. See *Mahesh Narain* v. *Newbat Patuk*, 32 Cal 654: 1 C. L. J. 364, where it was held that for certain purposes the set-off has the same effect as a plaint in a cross suit. See also *Guise* v.

Ananta Ram, 10 C W. N. 199 *Bhagatsingh* v. *Debi Dyal*, 85 P R. 1908. 130 P. L. R 1908: 80 P W. R. 1908, where it was held that if the claim be not an ascertained amount and the defendant does not ask for a decree but merely claims that he is entitled to get certain sums arising out of the same transaction and that his claim may be set-off against the claim of the plaintiff, such claim does not require court fee See *Contra*, *Fakir Chandra* v *Gisborne &c*, 8 C W N 174, *Subramania* v. *Authusawami*, 17 M L. J 481

What is not a Set-off?—In a suit for account and to recover the amount found due on taking unsettled accounts in a dissolved partnership, the defendants claimed that some money to be ascertained on taking accounts, is due from the plaintiff to them and prayed that they might get that amount, expressing their willingness to pay court fee on any sum awarded to them *Held*, that the defendant's claim is neither a set-off nor a counter claim, so is not liable to pay court fee under Art 1 schedule 1 of the Court Fees Act and the defendants cannot be compelled to value their claim or to pay court fees under section 7 iv. (b) of the Court Fees Act *Fateh Mahomed Haji Sulleman* v *K S Ramjan Khan*, 8 S L R 122 27 Ind Cases 316

In a suit for accounts in a dissolved partnership business, the plaintiff sued to recover the money due to the plaintiff, the defendant pleaded that money will be found due to him, *held*, that no court fee is payable as the defendant's claim is not a counter-claim but merely a statement that something is likely to happen if accounts are taken *Jessoram Dhanuram* v *Isardas*, 8 S L R 124 27 Ind Cas 320

In a contribution suit if the defendant claim that the previous payments by him should be taken into consideration, such sums are not strictly speaking a matter of set-off *Gogun Chand* v *Hurimohun*, 12 C L R 539

Under section 108 (f) of the Transfer of Property Act, the deduction, the lessee is authorized to make for the expenses of repairs from the rent as it becomes due, is in the nature of payments to the landlord and does not bear the character of a set-off *Katie Graham* v *Colonial Govt of British Guina*, 12 C L J 351.

Valuation of a set-off—There is no reason why the provisions of the Court Fees Act should not apply to the Valuation of the set-off for the purposes of court fees *D S Abraham & Co* v *Ebrahim*, 1925 A I R 65 (R); 84 I C. 971

Garnishee.—The equity arising from the cross debt could be set-off by the defendant without payment of court

fees. *Tayabali Gulam Hossein* v. *Atmaram Sakharam Vani*, 16 Bom. L. R. 520 · 38 Bom. 631.

Proviso.—Maximum court fee leviable on plaints, and memo, of appeals, is Rs. 3,000 under this proviso. *Kashi Prasad Singh* v *Secretary of State for India*, 29 Cal. 140 The rule laid down in section 17 of the Court Fees Act regarding multifarious suits is subject to the proviso at the end of Art 1 Schedule 1 of that Act, and the maximum fee leviable on the plaint or memorandum of appeal in such a suit is under that proviso Rs 3,000 *Raghobir Singh* v. *Dharam Kuar*, 3 All 108 F. B.

2 Plaint * * * in a suit for possession under [the Specific Relief Act, 1877, section 9]		A fee of one-half the amount prescribed in the foregoing scale

Amendments.—The words "Specific Relief Act, 1877, Section 9" were substituted for the words and figures "Act No XIV of 1859 (An Act to *provide for the limitation of suits*" by the Repealing and Amending Act, 1891 (12 of 1891). The words "or the memorandum of appeal" after the word plaint were repealed by the Court Fees Amendment Act, 1870 (Act 20 of 1870)

3 [*Repealed by Act VIII of 1871*]		
4 Application for review of judgment, if presented on or after the ninetieth day from the date of the decree.		The fee leviable on the plaint or memorandum of appeal.
5 Application for review of judgment, if presented before the ninetieth day from the date of the decree.		One-half of the fee leviable on the plaint or memorandum of appeal

Application.—Neither Art. 4 nor Art 5 of Schedule 1 of the Court Fees Act refers to an interlocutory order ; it is clear from the language of these articles that they refer to orders ending in decrees. *Jagannath Prosad* v. *Mulchand*, 31 All. 262 : 6 All L. J. 151 : 1 Ind. Cas. 999. See also *DeSouza* v. *The Secretary of State for India*, 1892 P. J. 383. For other cases see under section 15 of this Act *supra*.

Application under Section 151 C. P. C.—No application.

far less any with court fees as on an application for review need be filed under Section 151 C. P. C, *Probhas Kumar Ganguli* v. *Nithar Lal Ganguli*, 28 C. W N. 928

Leviable.—The word "leviable" seems to have been used instead of the word "levied" in order to provide, for an application for review by a defendant or respondent in the case of a suit in *forma pauperis* In the *matter of Maqbul Ahmed*, 31 All 294 (300), 6 All. L J. 215 1 Ind Cas 209

The words "leviable on a plaint or memorandum of appeal" in Art 5 of the Court Fees Act mean "leviable on the plaint or memorandum of appeal" in which the judgment, review of which is asked for, was passed and cannot be construed to mean "leviable" on a plaint or memorandum of appeal" asking for the same relief as that asked for in the application for review.

Application for review must, therefore, bear court fees without reference to the relief asked for in the application for review *Nageshar Sahai* v *Shiam Bahadur*, 74 Ind Cas 255 1924 All. I R 108 (Oudh)

The word "leviable" in Arts 4 and 5 has reference to the time when the plaint or memorandum of appeal was presented As the application relates back to the plaint or memorandum of appeal, as the case may be, the fee is levied in a fixed proportion, independent of the scope of the application for review *Nanhilal Agrani* v *Jogendra Chandra Dutta*, 28 C W N 403 ; 39 C L J 222 (225, 226, 227) ; 82 I C 297 , 1924 A I R 881 (Cal)

Date of the Decree.—See Order 20, Rule 7 C P C The decree shall bear the date when the judgment was pronounced &c

Computation of Time.—Sundays and holidays are not to be excluded in computing the time of 90 days *Sayera Bibi* v *Bhutnath Haldar*, 15 C L J 505 15 Ind Cas 455 *In re Kota*, 9 Mad 134 The time is to be computed from the date of signing the decree *Nowrang* v *Janardan*, 30 C L J 344 80 I. C 794 , 1924 A I R 994 (Cal) ; *Kalipada* v *Shekhar*, 20 C W N 967 ; 24 C L J 235 , 35 I C 348.

See also *Midnapore Zemindary & Co* v *Dayarda Nath Bhowmick*, 96 I C 437 *See for other cases under section 14 of this Act* Application for review filed after 90 days must bear full court fees. *Hari Lal Ram Dhan* v. *Mussammut Gaivabai*, 7 C P L R 111 Time for copying cannot be excluded in computing the period of 89 days, *Jugat Pal Singh* v. *Jogeshwar Baksh Singh*, 2 O C 302 *Ruldu Mal* v. *Sob'* 39 P. R. 1879.

Presentation.—The presentation to the Stamp Reporter was presentation within the meaning of Arts. 4 and 5 of Sch. 1, to to the Court Fees Act *Nowrang* v. *Janardan*, 39 C. L. J. 344; 1924 A. I. R. 994 (Cal.).

Court Fee Payable.—For the purpose of ascertaining the court fees payable under Art. 5, Schedule 1 of the Court Fees Act upon an application to review an appellate judgment, the fee to be considered is the fee leviable on the memorandum of the appeal in which the decree sought to be reviewed was passed, and not the fee which was leviable on the plaint, nor when the decree sought to be reviewed was passed on appeal under section 10 of the Letters Patent from an appellate judgment of a Division Bench, nor the fee which was leviable on the memorandum of the appeal before such Bench. *Husaini Begum* v. *The Collector of Muzaffarnagor*, 15 All 176: 9 All. W. N. 27; but if after the memorandum of appeal has been filed, the Court Fees Act was amended which required enhanced fees, the court fees on an application for review of judgment in that appeal, filed after the amendment has come into force, are to be assessed at the old rate before the amendments. *Nanhilal Agrani* v *J. C Dutt and others*, 28 C. W. N. 403; 39 C. L. J. 222, 82 I C. 297; 1924 A. I. R. 881 (Cal.).

The dismissal of an appeal under Order 41 Rule II C. P. C. by the High Court is a decree and falls within the definition of a decree in section 2 (2) C. P. C.

Court fee is payable under Art. 4 of Schedule 1 of the Court Fees Act on all documents irrespective of the schedules of the Court Fees Act in which such a document may be included *Altap Ali* v *Jamsur Ali*, 30 C. W. N. 331; 93 I. C. 909; 1926 A. I R. 638 (Cal)

Application for review of one claim out of several.—Where a plaint or memorandum of appeal comprises a number of claims and a portion only of such claims has been allowed by the judgment, the party asking a review should be required to stamp his application with a fee sufficient to cover the amount of the claims in regard to which he wishes the court to review its judgment on the ground that a plaint or memorandum of appeal embracing two or more distinct subject is treated, for the purpose of stamp revenue as a collection of distinct plaints or memoranda of appeals, and treating it in the manner, I think the words "the plaint or memorandum of appeal in article 5 may be construed as meaning, not necessarily the plaint or memorandum of appeal, formed by the combination of several subjects comprised in it but the plaint or memorandum of appeal which would have been presented in respect to the particular

subject, in regard to which the review is sought, if the suit had embraced that subject and no others" *In re Monohar G. Tambekar*, 4 Bom 26 See also *Anonymous* 7 M H. C. R. App. 1 *Contra* The court fee payable must be calculated on that paid on the plaint or memorandum of appeal in which the judgment sought to be reviewed was passed whether the question relates to whole or part of a decree *In the matter of Sheikh Maqbul Ahmed*, 31 All 294 6 All. L. J 215 · 1 Ind Cas. 209 ; *Imdad Hasan Khan* v. *Badri Prasad*, 1898 All W N 212 ; *Mussamat Hussaina* v *Mt Sahib Nur*, 59 P W R 1913 254 P L R 1913 20 Ind Cas 3. *Nageshar Sahai* v. *Shiam Bahadur*, 1924 A I R 108 (Oudh) ; 74 Ind Cas 255 , *Nanhilal* v *Jogendra Chandra*, 28 C W N 403 ; 39 C L J. 222 (227) , 82 I C 297 ; 1924 A I R. 811 (Cal.).

Review as to Costs —A suit being decided in favour of the plaintiff, one of the defendants filed an application for review as to costs only and stamped his petition of review on the entire amount of costs. The Munsiff ordered that stamp on the entire value of the suit should be paid and on the failure of the petitioner to comply with the order, to reject the petition. The petitioner moved the High Court ; *held*, that the decision of the Munsiff was right *Nobinchundra Chuckerbuty* v *Mohamed Uzir Ali Sarkar*, 3 C. W. N 292

Application for new trial —The application for review does not include new trial application in a small cause court suit in the muffasil, *Gopinath Ray* v. *Ram Joy*, 14 W R 249. See also *Chotelal* v *Bulakidas*, 7 Bom H C. A. 109.

Application for review filed to set aside fraudulent solenama. —Where an application was filed to set aside an order passed on a fraudulent vakalatnama and a fraudulent petition of compromise, the High Court held that in such case, the court had an inherent jurisdiction summarily to set aside the order passed and as such, no court fees as on an application for review, is necessary *Peary Chowdhury* v *Sannoo Das*, 19 C W N. 419.

Information to be given to the party.—The applicant must be informed of the deficiency in court fees on the application. If it is not in form he cannot be refused permission at the time of hearing to make up the deficiency. *In re Shahazada Fakeeroddeen Ahmed*, 15 W. R. 278.

Hearing of an insufficiently stamped application —A court has jurisdiction to hear an application for review even if the application be insufficiently stamped. *Surendranath* v. *Sitanath*, 21 I C. 943 (Cal).

6 Copy of translation of a judgment or order not being, or having the force of a decree	When such judgment or order is passed by any Civil Court other than a High Court, or by the presiding officer of any Revenue Court or office or by any other Judicial or Executive Authority	
	(a)—If the amount or value of the subject-matter is fifty or less than fifty rupees.	Four annas.
	(b)—If such amount or value exceeds fifty rupees	Eight annas.
	When such judgment or order is passed by a High Court.	One rupee.

Amendment.—This article has been amended in Bengal, Assam, Madras and Patna.

Copy or translation of.—Where portions of khata books are translated, each portion translated is treated as a separate document, and a portion less than a folio is to be charged as a whole folio The portions are not to be added together and charged according to the folios that then they may comprise. *Brojonath Dhar* v. *Bhabo Mohan Dhar*, 6 B. L. R. App. 137.

7 Copy of a decree or order having the force of a decree	When such decree or order is made by any Civil Court other than a High Court, or by any Revenue Court—	
	(a)—If the amount or value of the subject-matter of the suit wherein such decree or order is made is fifty or less than fifty rupees.	Eight annas.
	(b)—If such amount or value exceeds fifty rupees.	One rupee.
	When such decree or order is made by a High Court.	Four rupees.

NOTES.

Amendment.—This article is amended in Bengal, Assam, Madras, and Patna.

Order having the force of a Decree. —See Section 2 of the Code of Civil Procedure (Act V. of 1908).

Notes of Judgment.—Notes of judgment furnished to the parties under the Rules for the guidance of Small Cause Courts are copies of decrees which should be stamped under this article *Anonymous*, 6 M. H. C. App. 23

8 Copy of any document liable to stamp-duty under the Indian Stamp Act, 1899, when left by any party to a suit or proceeding in place of the original withdrawn—	(a)—When the Stamp-duty chargeable on the original does not exceed eight annas	The amount of the duty chargeable on the original
	(b)—In any other case	Eight annas

NOTES.

Amendment —This article is amended in Bengal, Assam, Bombay, Madras, and Patna

See now the Indian Stamp Act, 1899 (2 of 1899), section 42 Copies of entries from account books relied on by the plaintiff are kept with the record when such account books are returned to him under section 141 (Order 13 Rule 4) of the Code of Civil Procedure When so furnished they are not certified "by or by order of any public officer" and are not stamped but the question having arisen when the court clerk subsequently certified the copies as to their having been compared and found correct, *held*, that the originals not having been chargeable under the Stamp Act, no court fees can be levied by reason of the certificate *Hari Chand* v *Jivna Subhana*, 11 Bom. 526

A copy or an extract from an entry in an account book filed under section 141 A C. P C. (Act XIV of 1882) does not require to be stamped under Art 24, Sch 1 of the Stamp Act *Kastur* v. *Fakira*, 26 Bom. 522 4 Bom. L. R. 223 ; see also *Nandu Bai* v *Gou*, 27 Bom 150 · 4 Bom. L. R. 591

Article 8 of Schedule 1 of the Court Fees Act is intended to authorize the levy of a fee of 8 annas only in cases where the original which is withdrawn, is liable to stamp duty Where a document which is not required by law to be placed on the record is presented for verification and then returned to the holder, it cannot be said to be "withdrawn" within the meaning of Article 8, Schedule 1 of the Court Fees Act. Where, therefore, the plaintiff instituted a suit through his agent who

held a general power of attorney duly stamped, which power of attorney having been produced for verification, an unstamped copy was filed and left on the record. *Held,* that the copy was not chargeable with any fee inasmuch as the original power of attorney was never placed on the record and there is no law which required that it should be so placed. Article 8 of Schedule 1 of the Court Fees Act is intended to authorize the levy of a fee of 8 annas in the case contemplated by Order 13, Rule 9 C. P. C. If in such case the original is liable to stamp duty, the copy substituted is chargeable with a fee of 8 annas. *Rustomji* v *Kala Singh,* 136 P. W. R. 1917: 9 P. R. 1918: 43 Ind. Cas 383

Method of counting folios.—Where portions of a *khata* book are to be translated the method is to calculate each portion as a separate document, even if any of the portions is less than a folio The separate portions are not to be taken together and charged according to the aggregate number of folios. *Brajanath Dhar* v *Bhaboo Mohan Dhar,* 6 B. L. R. App. 137.

9 Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement, report, or of the like taken out of any Civil or Criminal or Revenue Court or office, or from the office of any chief officer charged with the executive administration of a Division—	For every three hundred and sixty words or fraction of three hundred and sixty words.	Eight annas

NOTES.

Several documents.—See *Brajonath Dhar* v. *Bhaba Mohan Dhar,* 6 B. L. R. App. 137 *supra.*

Copies —Certified copies of maps or plans or extracts of Baptismal, marriage and Burial certificates and certified copies under Birth, Death and Registration Act are to be stamped with 8 annas adhesive Court Fee Stamp

10. [*Repealed by the Guardians and Wards Act (VIII of 1890).* See 2].

11 Probate of a will or letters of Administration with or without will annexed—	When such amount or value of the property in respect of which the grant of probate or letters is made, exceeds one thousand rupees, but does not exceed ten thousand rupees.	Two per centum on such amount or value

	When such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees	Two and one-half per centum on such amount or value
	When such value or amount exceeds fifty thousand rupees	Three per centum on such amount or value.
	Provided that when, after the grant of a certificate under the Succession Certificate Act, 1889, or any enactment repealed by that Act, or under the Regulation of the Bombay Code, No VIII of 1827, in respect of any property included in an estate, a grant of probate, a grant of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant	

NOTES.

Local Amendment.—This Article has been amended in Assam, Bengal, Bombay, C P., and Bihar and Orissa.

Application.—Art 11 applies only to those cases when the duty is payable on the amount or value of the property in respect of which Probate or Letters of Administration shall be granted, if the amount or value of such property exceeds Rs 1,000 (by the present Amendment Act, Rs 2,000 in Bengal). *In the goods of Abdul Aziz*, 23 Cal. 577.

Valuation.—In cases not governed by the Indian Succession Act, Probate and Letters of Administration granted by the High Court of Bombay in respect of Hindus, Mahomedans and others not usually designated as British subjects take effect only for the purpose of recovering debts and securing debtors paying the same and probate duty is payable on the amount of such debts Cutchi Memons are Mahomedans *In the matter of the last will and testament of Haji Ismail Haji Abdulla, deceased*, 6 Bom 452

The words "amount or value of the property" in Article 11, Schedule 1 of the Court Fees Act refer only to the nett value.

Therefore, when the nett value of a property, in respect of which Probate or Letters of Administration are granted does not exceed Rs. 1,000, the Probate or Letters of Administration are not chargeable with any fees When the meaning of the legislative enactment is not clear, the benefit of the doubt must be in favour of the subject. *In re Chin Ah Yaing*, 7 Bur. L. R. 359 · 7 Bur. L. T. 275: 24 Ind. Cas. 823.

For other cases see Section 19C of this Act.

In cases governed by the Indian Succession Act.—"Value" means the nett value and court fees are to be paid on the nett value. *In re Catherine Thaddeus*, 7 Bur. L T. 272: 7 L. B. R. 256 24 Ind Cas. 793. *In the goods of Mrs. F. E. W. Meik*, 40 All 279 46 Ind. Cas. 865. *In the goods of Harriet Teviot Kerr*, 18 C W. N. 121: 18 C. L. J. 308: 21 Ind. Cas. 502.

In case of properties situate in different provinces.—Court Fees at enhanced rates when the fees have been raised, are rightly levied on the value of all the assets, whether in the Province or elsewhere. *In the goods of George Thomas Williams*, 27 C W N 812; (1924) All. I. R. 115 (Cal.).

In case of properties situate in different districts—If the property be situate in two districts (in this case also in two provinces and under different High Courts), then the value of the entire property situate in those districts is to be considered and in his case the duty paid in one of the Districts was allowed to be deducted from the amount payable on the valuation of the property situate in both districts. *The Commissioner of Singhboom* v. *Jagadish Chandra Deo*, 6 Pat. L. J. 411: 62 Ind. Cas 513.

In case of a chose in action—Art. 11 applies only to those cases where the duty is payable on the amount or value of the property in respect of which Probate or Letters of Administration, shall be granted, if the amount or value of such property exceeds Rs 1,000 but if the right to any such property is subject to any litigation, it is permissible to declare the valuation of that property as not exceeding Rs. 1,000 as the case is not provided for in the Act. *In the goods of Abdul Aziz*, 23 Cal. 577.

Letters of Administration granted to widow.—Where Letters of Administration to the estate of a deceased Burman are granted to his widow, the latter has only to pay court fees on what she takes as administratrix, *viz.*, what was her husband's share. *In the estate of U. Po Thin*, 11 Bur. L. T. 258: 50 Ind. Cas. 545.

Exemption.—Under section 8 of the Government Savings Banks Act (Act V. of 1893) a deposit of Rs. 1,000 is to be exempted from payment of court fee duty.

Where certain property is denied by the applicants to belong to the estate of the deceased, that property is to be excluded in calculating the value of the estate until the contrary is proved *Nittyo Kali Debya* v. *Kedar Chatterjee*, 5 C. L. R. 368.

Where the High Court declared the right of the petitioner in the decree and subsequently the petitioner applied for Letters of Administration and claimed exemption from duty, *held*, that no exemption can be made, the duty must be paid *In the goods of Sreenath Das*, 20 W R. 440

In an application for Probate or Letters of Administration the *ad valorem* court fees prescribed by statute should be repaid to the satisfaction of the court, such payment should be made to the Registrar and certified by him to Court. This certificate or a certificate of the Taxing Officer, where exemption is claimed and allowed, should be produced to the court with the application and affidavit of valuation. *In the goods of Omda Bibee*, 26 Cal. 407 3 C. W. N 392.

If the gross value of such property exceeds Rs 1,000 but the nett value after deductions of the debts due by the deceased falls below Rs 1,000, then no court fee is payable *In the goods of George Henry Quiningborough*, 20 C W N. 501. 22 C L J 160 30 Ind Cas 958

Schedule 1, Annexures A and B, of the Court Fees Act make it clear that the duty payable on an application for Probate or Letters of Administration under Sch. I, Art 11 of the Act is to be calculated upon the nett value of the estate obtained by deduction of the amount of debts from the gross value of the estate. *In the goods of Harriett Teviot Kerr, deceased*, 21 Ind Cas 502 18 C W. N 121. 18 C L J 308 But see *contra, The Collector of Maldah* v *Nirod Kamini Dassy*, 17 C W N. 21 15 Ind Cas 621, where it was held that court fees are payable on the gross value.

Procedure.—The ordinary court clerk or officer, whose duty it is to see that court fees are paid, is not authorised in the Calcutta High Court in its original jurisdiction, to allow claims to exemption from probate duty, on his own responsibility and that all such claims are required to be querried and referred to the Taxing Officer *In re Bhubaneshwar Trigunait*, 52 Cal. 871; 27 C W N 879; 95 I C 529, 1925 A I. R. 1201 (Cal.).

Provident Fund—Provident Fund money is exempted from Probate and administration duty as on death it passes to a nominee, and even in the absence of an Administration it does not form an asset of the deceased. *Mrs. Agnes* v. *James William*, 81 I. C 128: 1925 A. I. R 108 (1) (Nag.). *In re Digambar*, 92 I. C. 525; 1926 A. I. R. 306 (Nag.).

Exercise of power of appointment.—By his will A directed that Rs. 7,000 out of his property should be lent out at interest, that the interest derived from time to time should be added to the principal amount and that the amount so accruing should be paid to whoever B, his wife, by her will, should appoint. A died, and his will was proved, probate duty being paid on the principal amount of Rs. 7,000. B executed a will in which she exercised the power of appointment and then died, her executor now applied for probate of her will, and the question was raised whether he was liable to pay probate duty on the fund or any part thereof. *Held*, that the power of appointment created by the will was 'property' within the meaning of Article II of Schedule I to the Court Fees Act, and that the estate of the testatrix was liable to probate duty in respect thereof. *In re Lakshminarayan Ammal*, 25 Mad. 315. *In the goods of George*, 6 B L. R. Appendix 138: 15 W. R. 457 notes.

There is no provision in the Court Fees Act for the levy of *ad valorem* court fees on personal property appointed by will under general powers of appointment. *In the goods of Julia Oram*, 21 W. R. 245: 12 B. L. R. App. 21.

The word "property" has been explained to include even beneficial interest *In the goods of Beresford and In the goods of Maddock*, 7 B L. R. O. C. 57: 15 W. R. 456.

Note.—In calculating court fees payable on the value of the property, where such value exceeds Rs. 1,000 the entire value is to be considered and not merely the excess over Rs. 1,000.

12. Certificate under the Succession Certificate Act, 1889.	In any case —	Two per centum on the amount or value of any debt or security specified in the certificate under section 8 of the Act, and three per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act NOTE.—(1) The amount of a debt is its amount, including interest on the day on which the inclusion of the debt in the certificate is applied for so far as such amount can be ascertained

(2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act, and, where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of, the security, or for both purposes, the value of the security is its market-value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained.

NOTES.

Amendment.—This article has been amended in Bengal by Bengal Act IV of 1922, in Assam by Assam Act II of 1922; in B. & O by B & O Act I of 1922; in Bombay by Bombay Act III of 1926; in Madras by Madras Act V of 1922; in C. P. by C. P. Act I of 1923

Heirship Certificate.—Where the value of the property in respect of which certificate of heirship is sought, the stamp duty should be calculated on the whole amount, not on the excess of over Rs. 1,000—the condition of liability—being excess above Rs. 1,000. *Anonymous*, 5 M. H. C. Ap 45.

Double fee is to be paid.—Whenever a fresh succession certificate is taken, even though it is to collect debts for which a succession certificate has already been taken out and duty paid, the duty prescribed by the Court Fees Act must be paid. *In re Sorojebashini Debi*, 20 C. W. N. 1125: 36 Ind. Cas. 125.

The effect of the provisions in the note to Art. 12 of Schedule 1 to the Court Fees Act on the operation of a certificate duly granted, which has become liable to cancellation under that provision, but has not been cancelled, is, that the validity of such subsisting certificate, as proof of the representative right of person to whom it was granted to enforce by suit or process of execution, payment of a debt and not to prevent realisation of monies. Its apparent object is not to prevent realization of money due by means of an existing certificate, but to secure the payment of the stamp revenue on all sums so realized by a suit or other proceedings in excess of the

amount or value of the property in respect of which the certificate was granted *Govindappah v. Kondappah Sastruke*, 6 M. H. C. 131: See also *Bava Sant Ram v. Jasmal*, P. R. 1887.

	(1) As regards debts and securities	The same fee as would be payable in respect of a certificate under the Succession Certificate Act, 1889, or in respect of an extension of such a certificate, as the case may be, and
12A Certificate under the Regulation of the Bombay Code, No VIII of 1827	(2) As regards other property in respect of which the certificate is granted—	
	When the amount or value of such property exceeds one thousand rupees, but does not exceed ten thousand rupees,	Two per centum on so much of the amount or value.
	When such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees;	Two and half percentum on such amount or value.
	When such amount or value exceeds fifty thousand rupees.	Three per centum on such amount or value.

NOTES

Amendment.—This article was amended by the Court Fees Amendment Act, 1910 (Act VII of 1910) Section 2. This article has been amended by Bombay Act III of 1926.

13 Application to the High Court of Judicature at Lahore for the exercise of its jurisdiction under section 70 of the Punjab Courts Act, 1884, as amended by the Punjab Act, 1899 [or to the Court of the Financial Commissioner of the Punjab for the exercise of its revisional jurisdicton under section 84 of the Punjab Tenancy Act, 1887]	When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees	Two rupees
	When such amount or value exceeds twenty-five rupees.	The fee leviable on a memorandum of appeal.

NOTES.

Amendment.—This article was inserted by the Punjab Courts Act, 1884 (18 of 1884), section 71, as amended by the Punjab Courts Act, 1891 (25 of 1899), Section 6.

The words "or to the court of the Financial . . . the Punjab Tenancy Act, 1887" were added by section 1 of the Court Fees Amendment Act, 1900 (9 of 1900)

The words "High Court of Judicature at Lahore" were substituted for the words 'Chief Court in the Punjab' by Repealing and Amending Act, 1919 (Act XVIII of 1919). Section 2 and Schedule to that Act.

This article has been amended by Punjab Act VII of 1922 as amended by Punjab Acts I and VI of 1926

N. W. Frontier Provinces—Similar fees are payable on the like applications to the Court of the Judicial commissioner of the N.-W. Frontier Province, *se* section 85 (1) of the N.-W. Frontier province Law and Justice Regulation, 1901 (7 of 1901).

Application for revision—An application for revision of an order rejecting an objection to an award in a case transferred to arbitration through court and in which a decree was passed in accordance with the award, is chargeable with *ad valorem* court fee under Article 13, Schedule 1 of the Court Fees Act. When the subject-matter of the dispute exceeds Rs 25, the fact that no decree was framed at the date of making the aplpication would not affect the question of court fee. *Narpat Rai* v. *Devi Das*, 13 P W R 1911 4 P L R 1911 · 9 Ind Cas. 388.

Refund of Fees—As to refund of fees, see section 72 of the Punjab Courts Act (Act XVIII of 1884 as amended by Act XXV of 1899 section 7).

14 Application to Chief Court in Lower Burma for the exercise of its revisional jurisdiction under section 115 of the Code of Civil Procedure 1908 or section 25 of the Provincial Small Cause Courts Act, 1887	When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees	Two rupees
	When such amount or value exceeds twenty-five rupees	The fee leviable on a memorandum of appeal

NOTES

See section 85 of the Lower Burma Act, 1889 (11 of 1899) and the Lower Burma Courts Act, 1900 (VI of 1900), section 47, Schedule 1. The Chief Court no longer exists. There is now a High Court in Burma.

15. Application to the Court of the Judicial Commissioner, Upper Burma, for the exercise of its revisional jurisdiction under section 115 of the Code of Civil Procedure 1908 or section 25 of the Provincial Small Cause Courts Act, 1887	When the amount or value of the subject-matter in dispute does not exceed twenty-five rupees	Two rupees.
	When such amount or value exceeds twenty-five rupees.	The fee leviable on a memorandum of appeal.

NOTES

This article was inserted in the first schedule to this Act in its application to Upper Burma, *see* the Upper Burma Civil Courts Regulation, 1896 (1 of 1896) s 36, Bur. Code.

The words "or section 14 of the Upper Burma Civil Courts Regulation, 1896 were repealed by the Upper Burma Courts (Amendment) Regulation, 1903 (5 of 1903), section 4.

Table of Rates of Ad Valorem Fees.
Act VII of 1870 (Old Act.)

Table of Rates of 'ad valorem' fees leviable on the institution of suits.

When the amount or value of the subject-matter exceeds	But does not exceed.	Proper Fee. (Act VII of 1870)			When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee. (Act VII of 1870)		
Rs	Rs	Rs.	A	P	Rs	Rs.	Rs.	A.	P
...	5	0	6	0	380	390	29	4	0
5	10	0	12	0	390	400	30	0	0
10	15	1	2	0	400	410	30	12	0
15	20	1	8	0	410	420	31	8	0
20	25	1	14	0	420	430	32	4	0
25	30	2	4	0	430	440	33	0	0
30	35	2	10	0	440	450	33	12	0
35	40	3	0	0	450	460	34	8	0
40	45	3	6	0	460	470	35	4	0
45	50	3	12	0	470	480	36	0	0
50	55	4	2	0	480	490	36	12	0
55	60	4	8	0	490	500	37	8	0
60	65	4	14	0	500	510	38	4	0
65	70	5	4	0	510	520	39	0	0
70	75	5	10	0	520	530	39	12	0
75	80	6	0	0	530	540	40	8	0
80	85	6	6	0	540	550	41	4	0
85	90	6	12	0	550	560	42	0	0
90	95	7	2	0	560	570	42	12	0
95	100	7	8	0	570	580	43	8	0
100	110	8	4	0	580	590	44	4	0
110	120	9	0	0	590	600	45	0	0
120	130	9	12	0	600	610	45	12	0
130	140	10	8	0	610	620	46	8	0
140	150	11	4	0	620	630	47	4	0
150	160	12	0	0	630	640	48	0	0
160	170	12	12	0	640	650	48	12	0
170	180	13	8	0	650	660	49	8	0
180	190	14	4	0	660	670	50	4	0
190	200	15	0	0	670	680	51	0	0
200	210	15	12	0	680	690	51	12	0
210	220	16	8	0	690	700	52	8	0
220	230	17	4	0	700	710	53	4	0
230	240	18	0	0	710	720	54	0	0
240	250	18	12	0	720	730	54	12	0
250	260	19	8	0	730	740	55	8	0
260	270	20	4	0	740	750	56	4	0
270	280	21	0	0	750	760	57	0	0
280	290	21	12	0	760	770	57	12	0
290	300	22	8	0	770	780	58	8	0
300	310	23	4	0	780	790	59	4	0
310	320	24	0	0	790	800	60	0	0
320	330	24	12	0	800	810	60	12	0
330	340	25	8	0	810	820	61	8	0
340	350	26	4	0	820	830	62	4	0
350	360	27	0	0	830	840	63	0	0
360	370	27	12	0	840	850	63	12	0
370	380	28	8	0	850	860	64	8	

Act VII of 1870 (Old Act.)

Table of Rates of 'ad valorem' fees leviable on the institution of suits.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee, (Act VII of 1870)			When the amount or value of the subject-matter exceeds	But does not exceed.	Proper Fee. (Act VII of 1870)		
Rs	Rs	Rs.	A.	P.	Rs	Rs	Rs.	A.	P.
860	870	65	4	0	4,400	4,500	250	0	0
870	880	66	0	0	4,500	4,600	255	0	0
880	890	66	12	0	4 600	4,700	260	0	0
890	900	67	8	0	4,700	4,800	265	0	0
900	910	68	4	0	4,800	4,900	270	0	0
910	920	69	0	0	4,900	5,000	275	0	0
920	930	69	12	0	5,000	5,250	285	0	0
930	940	70	8	0	5,250	5,500	295	0	0
940	950	71	4	0	5,500	5,750	305	0	0
950	960	72	0	0	5,750	6,000	315	0	0
960	970	72	12	0	6,000	6,250	325	0	0
970	980	73	8	0	6,250	6,500	335	0	0
980	990	74	4	0	6,500	6,750	345	0	0
990	1,000	75	0	0	6 750	7,000	355	0	0
1,000	1,100	80	0	0	7,000	7,250	365	0	0
1,100	1,200	85	0	0	7,250	7,500	375	0	0
1,200	1,300	90	0	0	7,500	7,750	385	0	0
1,300	1,400	95	0	0	7,750	8 000	395	0	0
1,400	1,500	100	0	0	8,000	8,250	405	0	0
1,500	1,600	105	0	0	8 250	8,500	415	0	0
1,600	1,700	110	0	0	8,500	8,750	425	0	0
1,700	1,800	115	0	0	8,750	9,000	435	0	0
1,800	1,900	120	0	0	9,000	9,250	445	0	0
1,900	2,000	125	0	0	9 250	9,500	455	0	0
2,000	2,100	130	0	0	9,500	9,750	465	0	0
2,100	2 200	135	0	0	9,750	10,000	475	0	0
2,200	2,300	140	0	0	10,000	10,500	490	0	0
2,300	2,400	145	0	0	10,500	11,000	505	0	0
2 400	2,500	150	0	0	11,000	11,500	520	0	0
2,500	2,600	155	0	0	11,500	12,000	535	0	0
2,600	2 700	160	0	0	12 000	12,500	550	0	0
2,700	2,800	165	0	0	12,500	13,000	565	0	0
2,800	2,900	170	0	0	13,000	13,500	580	0	0
2,900	3,000	175	0	0	13,500	14,000	595	0	0
3 000	3,100	180	0	0	14,000	14,500	610	0	0
3,100	3,200	185	0	0	14 500	15,000	625	0	0
3 200	3,300	190	0	0	15,000	15,500	640	0	0
3,300	3,400	195	0	0	15,500	16,000	655	0	0
3 400	3,500	200	0	0	16,000	16,500	670	0	0
3,500	3 600	205	0	0	16 500	17,000	685	0	0
3,600	3,700	210	0	0	17,000	17,500	700	0	0
3,700	3,800	215	0	0	17,500	18,000	715	0	0
3 800	3 900	220	0	0	18 000	18,500	730	0	0
3 900	4,000	225	0	0	18 500	19,000	745	0	0
4 000	4,100	230	0	0	19 000	19,500	760	0	0
4 100	4,200	235	0	0	19,500	20,000	775	0	0
4 200	4,300	240	0	0	20 000	21,000	795	0	0
4,300	4,400	245	0	0	21,000	22,000	815	0	0

Act VII of 1870 (Old Act.)

Table of Rates of 'ad valorem' fees leviable on the institution of suits.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee (Act VII of 1870)			When the amount or value of the subject-matter exceeds	But does not exceed	Proper Fee. (Act VII of 1870)		
Rs	Rs	Rs.	A	P.	Rs	Rs	Rs.	A	P
22 000	23,000	835	0	0	1,90,000	1,95,000	1,900	0	0
23,000	24,000	855	0	0	1,95,000	2,00,000	1,925	0	0
24 000	25,000	875	0	0	2,00,000	2,05,000	1,950	0	0
25 000	26,000	895	0	0	2,05,000	2,10,000	1,975	0	0
26 000	27,000	915	0	0	2,10,000	2,15,000	2,000	0	0
27 000	28,000	935	0	0	2,15,000	2,20,000	2,025	0	0
28,000	29,000	955	0	0	2,20,000	2,25,000	2,050	0	0
29,000	30,000	975	0	0	2,25,000	2,30,000	2,075	0	0
30,000	32,000	995	0	0	2,30,000	2,35,000	2,100	0	0
32,000	34,000	1,015	0	0	2,35 000	2,40,000	2,125	0	0
34,000	36,000	1,035	0	0	2,40 000	2,45,000	2,150	0	0
36,000	38,000	1,055	0	0	2,45 000	2,50 000	2,175	0	0
38 000	40 000	1 075	0	0	2 50 000	2,55,000	2,200	0	0
40 000	42 000	1,095	0	0	2 55 000	2,60 000	2,225	0	0
42 000	44 000	1,115	0	0	2,60,000	2,65 000	2,250	0	0
44,000	46 000	1,135	0	0	2 65,000	2 70,000	2,275	0	0
46 000	48,000	1,155	0	0	2,70 000	2,75,000	2,300	0	0
48,000	50,000	1,175	0	0	2,75,000	2 80,000	2,325	0	0
50,000	55,000	1 200	0	0	2,80,000	2,85,000	2,350	0	0
55 000	60,000	1 225	0	0	2 85,000	2,90,000	2,375	0	0
60 000	65,000	1,250	0	0	2,90 000	2,95 000	2 400	0	0
65,000	70 000	1,275	0	0	2,95,000	3,00,000	2 425	0	0
70,000	75,000	1,300	0	0	3,00 000	3,05,000	2,450	0	0
75,000	80,000	1,325	0	0	3 05,000	3,10 000	2,475	0	0
80,000	85,000	1,350	0	0	3,10 000	3,15,000	2 500	0	0
85 000	90 000	1,375	0	0	3,15,000	3,20,000	2,525	0	0
90 000	95,000	1,400	0	0	3 20,000	3,25,000	2,550	0	0
95,000	1,00,000	1,425	0	0	3,25 000	3,30,000	2,575	0	0
1,00,000	1 05,000	1,450	0	0	3,30 000	3,35,000	2,600	0	0
1,05,000	1,10 000	1,475	0	0	3,35 000	3,40 000	2,625	0	0
1,10 000	1,15,000	1 500	0	0	3,40 000	3,45 000	2,650	0	0
1,15 000	1,20 000	1,525	0	0	3,45 000	3,50 000	2,675	0	0
1,20 000	1,25,000	1,550	0	0	3 50 000	3,55 000	2,700	0	0
1,25 000	1,30 000	1,575	0	0	3,55 000	3 60 000	2,725	0	0
1,30,000	1,35,000	1,600	0	0	3 60 000	3,65,000	2,750	0	0
1,35 000	1,40 000	1,625	0	0	3 65 000	3 70 000	2,775	0	0
1,40 000	1,45,000	1,650	0	0	3,70 000	3,75 000	2,800	0	0
1,45,000	1,50,000	1,675	0	0	3 75 000	3,80 000	2 825	0	0
1,50 000	1,55,000	1,700	0	0	3 80 000	3 85 000	2,850	0	0
1,55 000	1,60 000	1,725	0	0	3 85 000	3 90,000	2,875	0	0
1,60,000	1,65,000	1 750	0	0	3 90 000	3,95 000	2,900	0	0
1,65 000	1,70 000	1,775	0	0	3 95 000	4 00 000	2 925	0	0
1,70 000	1,75 000	1 800	0	0	4 00 000	4 05 000	2,950	0	0
1,75 000	1,80,000	1 825	0	0	4 05 000	4,10 000	2,975	0	0
1,80 000	1,85 000	1 850	0	0	4 10 000	...	3,000	0	0
1,85,000	1,90,000	1,875	0	0					

SCHEDULE II.

Fixed Fees.

Number		Proper Fee.
1. Application or petition	(*a*)—When presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings;	One anna.
	or when presented to any officer of Land-revenue by any person holding temporarily-settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement;	Ditto.
	or when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement;	Ditto
	or when presented to any Civil Court other than a principal Civil Court of original jurisdiction, * * * or to any Court of Small Causes constituted under Act No IX of 1887, or under the Bengal North Western Provinces and Assam Civil Courts Act No. XII of 1887, sec 25 or to a Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees;	Ditto
	or when presented to any Civil, Criminal or Revenue Court or to any Board or Executive Officer for the purpose of obtaining a copy or translation of any judgment, decree, or order passed by such Court, Board, or officer, or of any	Ditto

Number		Proper Fee.
1. Application, etc.—*contd*	other document on record in such Court or Office.	
	(*b*)—When containing a complaint or charge of any offence other than an offence for which police-officers may, under the Criminal Procedure Code, 1898, arrest without warrant, and present at any Criminal Court,	Eight annas.
	or when presented to a Civil, Criminal or Revenue Court or to a Collector, or any Revenue-officer having jurisdiction equal to or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act;	Ditto.
	or to deposit in Court revenue or rent,	Ditto
	or for determination by a Court of the amount of compensation to be paid by a landlord to his tenant.	Eight annas'
	(*c*)—When presented to a Chief Commissioner or other Chief Controlling Revenue or Executive Authority, or to a Commissioner of Revenue or Circuit, or to any chief officer charged with the executive administration of a Division and not otherwise provided for by this Act	One rupee
	(*d*)—When presented to a High Court	Two rupees.

NOTES.

Amendments.—The words "or to any Cantonment Magistrate sitting as a Court of Civil Judicature under Act No. III of 1859" were repealed by the Cantonments Act, 1889 (13 of 1889).

For Act XI of 1856, *see* now the Provincial Small Cause Courts Act, 1887 (9 of 1887) by which Act 11 of 1865 was repealed

For Act XVI of 1868 *see* now section 25 of the Bengal, North-Western Provinces and Assam Civil Courts Act, 1887 (12 of 1887).

Local Amendments.—This Schedule has been amended in Bengal by B. C. Act IV of 1922, in Assam by Assam Act II of 1922, in Madras by Madras Act V of 1922, in Bombay by Bombay Act III of 1926 and in Behar and Orissa by B. and O. Act I of 1922; in Punjab by Punjab Act VII of 1922; C. P. by C. P. Act I of 1923.

Assistance of Collector in Ejecting a Raiyat.—An application for the assistance of a Collector in ejecting a raiyat need only be stamped with a court fee of 8 annas. *Puari Mohan* v. *Kina Bewa*, 2 B. L. R. 226.

Award.—The proper court fee upon an application to file an award under Section 525 C. P. C. (Sch. II Rule 20 C. P. C.) is that prescribed for applications. *Bijadhur* v. *Manohur*, 10 Cal. 11 13 C. L. R. 171; *Lala Dharam Das* v. *Ajudhia Pershad*, 70 P. R. 1881.

Copy—application for.—An application to the High Court for certified copies of the decree and judgment may be made on a stamp of one anna. *Turif Biwsas, Petitioner*, 7 W. R. 455. *See* also rules of the High Court (Calcutta), Appellate Side.

Civil Procedure Code.—Section 115 is for Bengal Amendment only. For Section 115, see Code of Civil Procedure (Act V of 1908).

Sanction to prosecute.—Applications against orders under Section 476 of the Code of Criminal Procedure by a civil court, come under Section 115 of the Code of Civil Procedure, *Har Prasad Das* v. *The Emperor*, 40 Cal. 477. 17 C. W. N. 647: 19 I. C. 197: 17 C. L. J. 647 F. B. (the order of reference excluded consideration of Section 195 of the Criminal Procedure Code; but applications against orders under Section 195 of the Code of Crminal Procedure by a civil court do not come under Section 115 of the Code of Civil Procedure as under that section a superior court has power to set aside an order by the inferior court passed under that section,, *Budhu Lal* v. *Chattu Gope*, 42 Cal. 597: 36 I. C. 472; *Salig Ram* v. *Ramji Lal*, 28 All. 554: 3 A. L. J. 394; See *contra Deputy Legal Remembrancer of B & O.* v. *Ram Udar Singh*, 19 C. W. N. 447: 21 C. L. J. 198: 28 I. C. 334.

Information to Court.—A document which is merely a petition to the court informing it of an agreement into which the parties had orally entered out of court to compromise a suit and praying for a decree in the terms of the compromise, does not require to be engrossed upon a general stamp paper but only requires the ordinary court fee of eight annas under Schedule II Art. I., *Ram Saran Lal* v. *Emperor*, 40 All. 19;

15 A L. J 846 See also *Reference under Stamp Act*, 8 Mad. 15 F B.

Minors.—A petition under Act IX of 1861 (Act relating to minors requires a stamp as on a petition *Anonymous*, 6 P. R 1873

Probate.—The stamp requisite for an application for a probate of a will or Letters of Administration is not required to be proportionate to the value of the property involved as such applications come under the provision made in Art. 1 Schedule II of Act VII of 1870, for common applications and petitions, *In the matter of Judoonath Sadhoo Khan and others*, 15 W R 40

Where an application for probate was filed and the opposite party contested the same and on the trial court deciding the case in favour of petitioners, the opposite party filed an appeal. *Held, that Art I Sch II of the Court Fees Act applied and* not Art II of Sch 1, on principle *ad valorem* court fee should not be levied on such cases, *J M Rodrigues* v. *A. M. Mathias*, 9 M. L T 314 11 M W N 237: 21 M L J 481: 9 Ind. Cas 538 See also *Lee* v *Hardy*, 9 All. W. N. 27 which was a case under the Succession Act and it was held that a memorandum of appeal is to be stamped with a court fees of Rs 2 only But see *Miss Eva Mountstephens* v. *Mr. Hunter Garnett Orme*, 35 All 448 22 Ind. Cas 98, where it was *held*, that Rs 10 is payable as court fees on the memorandum of appeal under Art 17, clause vi Sch. II of the Court Fees Act as it is impossible to estimate at a money value the subject matter of dispute

1A Application to any Civil Court that records may be called for from another Court :— When the Court grants the application and is of opinion that the transmission of such records involves the use of post.	Twelve annas in addition to any fee levied on the application under Clause (a), Clause (b) or Clause (d) of Art. 1 of this Schedule.

NOTES.

Change in Law.—This article has been added by Act XIV of 1911 section 2 and amended by B. and O. Act I of 1922.

2 Application for leave to sue as a pauper		Eight annas.

3 Application for leave to appeal as a pauper.	(a)—When presented to a District Court.	One rupee.
	(b)—When presented to a Commissioner or a High Court	Two rupees
4. Plaint or memorandum of appeal in a suit to obtain possession under Act No XVI of 1838, or [the Mamlatdars' Courts Act, 1876].		Eight annas.

NOTES.

Amendments.—This article has been amended in Punjab by Punjab Act VII of 1922.

The words "the Mamlatdar's Courts Act, 1876" were substituted for the words "Bombay Act No. V of 1864" (*to give Mamlatdars' Courts jurisdiction in certain cases to maintain existing possession, or to restore possession to any party dispossessed otherwise than by course of law*), by the Repealing and Amending Act, 1891 (12 of 1891), Gen. Acts, Vol IV.

The Mamlatdars' Courts Act, 1876 is now the Bombay Mamlatdars' Court Act, 196 (Bom. Act II of 1906).

5. Plaint or memorandum of appeal in a suit to establish or disprove a right of occupancy.		Eight annas.

NOTES.

Amendments.—This article has been amended in Punjab by Punjab Act VII of 1922.

In a suit under section 95 of the Agra Tenancy Act, 1901, to declare the plaintiff's status as an occupancy tenant, the plaint or memorandum of appeal should bear a court fees of eight annas as provided in Art. I of Sch. II to the Court Fees Act, and section 7 paragraph xi does not apply to such a suit, *Ratan Singh* v *Khem Singh*, 40 All. 358: 16 A. L. J. 167: 44 Ind. Cas. 608.

Where a suit is brought to eject the defendant as a tenant-at-will, the real object being to defeat the defendant's claim to the land as an occupancy raiyat, the suit thus being really brought to contest the right of occupancy, the plaint or memorandum of appeal need only be stamped with a court fee of annas 8, *Bibi Nurjahan* v *Marfan Mundul*, 11 C. L. R. 91: See also *Brahmayya* v *Lakshminarasimham*, 16 Mad. 310.

6. [Bail-bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure, 1898, or the Code of Civil Procedure 1908 and not otherwise provided for by this Act]	Eight annas.

NOTES.

Change in Law.—This article is substituted in Art. 6 for the words "Bail-bond or other instrument of obligation not otherwise provided for by this Act, when given by the direction of any court or executive authority" by the Probate and Administration Act, 1889 (6 of 1889), section 8 (2).

The words "1908 and not otherwise provided for by this Act" were added by Act VII of 1914, first schedule.

N. B—The reference to the old Code of Criminal Procedure is altered in accordance with section 3 (1) of Act V of 1898.

NOTE —By Act VI of 1889 section 18 (4) the words "or by the Court Fees Act, 1870" were added to Art. 15, Schedule I of the Stamp Act ; hence double duty may not be payable under the Court Fees Act and the Stamp Act.

Amendment.—This article has been amended in Bombay by Bombay Act I of 1922.

Where the appellant was ordered to find security for the costs of the respondent in the event of her appeal being dismissed and she in compliance with the above order of the court filed a security bond stamped with a court fees of 8 annas, *held*, as the bond is given under orders of the court as security by one party for costs of another, it is subject to two duties (*a*) an *ad valorem* stamp under the Stamp Act Art. 13, Schedule 1, (*b*) a court fee of 8 annas under the Court Fees Act, Art. 6 Schedule II, *Kulwanta* v. *Mr* ..

Prasad, F. B. 11 All. 16: (1888) 8 All. W. N. 281. But security bond given by the appellant for stay of execution under a conditional order of court staying execution upon the appellant giving security must be stamped under the Stamp Act These are not strictly under orders of a court as the party may furnish them or not as he pleases. *Dwarkanath Dey* v. *Sailaja Kantha Mullick*, 21 C. W. N. 1150; security bonds for costs of appeal to the Privy Council come under Art 12 Schedule A. Act X of 1862 (Stamp Act), *Soonjharee Koonwar* v *Ramessur Pandey*, 5 W. R. Mis. 47, but this was the old law.

A security bond for the production of attached live stock given in accordance with the requirements of the Rules under section 269 of the C. P Code of 1882, is a bond given in pursuance of an order made by a court under a section of the Code of Civil Procedure, within the meaning of Art. 6 Schedule II of the Court Fees Act; the High Court said, "where a bond is given in pursuance of a Rule made under powers conferred by a section of the Code, I think the bond may be said to be given in pursuance of an order made by a court under a section of the Code of Civil Procedure, that consequently the bond is "otherwise provided for by the Court Fees Act" and that the stamp payable is an eight anna stamp under Court Fees Act," *Reference under the Court Fees Act, re The District Munsiff of Tiruvallur*, 37 Mad. 17 (21): 24 M L J. 637; 20 Ind Cas. 775.

A security bond taken on an order for stay of execution must be stamped in accordance with the Stamp Act and cannot be written on plain paper bearing a court fee of eight annas *Gurau Ditta Mal v. Firm Gurudasmal-Ramchand and others*, 1926 A I. R. 552 (Lahore).

Where in a certain claim case, the claimant filed a security bond executed by one Yad Ali who agreed to be liable up to Rs. 10 in case he failed to produce certain goats which were attached in execution, *held*, Art. 6 of Sch. II of the Court Fees Act applies to the instrument of obligation as it was given in pursuance of an order made by a court under the Code of Civil Procedure. *Sarbo Mussulmani* v. *Safar Mandal*, 49 Cal. 997; *68 Ind. Cas. 730; (1923)* A. I. R. *269 (Cal.)*.

The security bond executed in pursuance of an order of the court under order 32 rule 6 (2) or any other Rule or Section of the Code of Civil Procedure must bear a court fee stamp as required by Art. 6 of Schedule II of the Court Fees Act, 1870, and they will also be chargeable under the Stamp Act if they are of the kind described in Article 40 or Article 57, but they will not be chargeable under the Stamp Act if they

fall under the residuary Article 15. *Reference from the Munsiff, Habiganj*, F. B. 53 Cal 101 ; 29 C. W. N. 851 ; 42 C L. J. 5 ; 1925 A I. R. 906 (Cal.).

Where a bond is executed in favour of the court by the Receiver whereby he bound himself, and immovable properties belonging to him were charged for proper discharge of his duties, held, that the bond must be stamped both under the Court Fees Act and under Art 40 schedule I of the Stamp Act as it comes under the definition of a mortgage in section 2 (5) of the Stamp Act and consequently Art. 15 is inapplicable *Amirthammal* v *Madalakaram* F. B. (1920) M. W. N. 246 : 43 Mad 363 · 38 M. L J 503 : 12 L. W 537 : 57 Ind. Cas. 184

7 Undertaking under section 49 of the Indian Divorce Act		Eight annas.

NOTES.

Amendment.—This Article is amended in Bengal by B C Act IV of 1922, in Assam by Assam Act II of 1922, in Madras by Madras Act V of 1922 and in Behar and Orissa by B and O. Act I of 1922 ; in the Punjab by Punjab Act VII of 1922 , and in Bombay by Bombay Act III of 1926. The Indian Divorce Act is Act IV of 1869.

8 and 9 Rep. by the Repealing and Amending Act, 1891 (XII of 1891).		
10 Mukhtaranama or Wakalatnama.	When presented for the conduct of any one case—	
	(*a*)—to any Civil or Criminal Court other than a High Court or to any Revenue Court, or to any Collector or Magistrate, or other executive officer, except such as are mentioned in clauses (*b*) and (*c*) of this number.	Eight annas.

(b)—to a Commissioner of Revenue, Circuit, or Customs, or to any officer charged with the executive administration of a Division, not being the Chief Revenue or Executive Authority,	One rupee
(c)—to a High Court, Chief Commissioner, Board of Revenue, or other Chief Controlling Revenue or Executive Authority.	Two rupees.

NOTES.

Amendment.—This article has been amended in the Punjab by Punjab Act VII of 1922; in Bengal by Bengal Act IV of 1922, in Assam by Assam Act II of 1922; in Madras by Madras Act V of 1922; in C. P. by C. P. Act I of 1923.

Scope.—Schedule II Art. 10 merely requires that when an authority is filed such authority must bear a stamp. It *does not require that vakalatnama should be filed in criminal* cases. *Subda Sontal and another* v. *Emperor*, 1926 A. I. R 296 (Patna); 7 P. L. T. 524.

Conduct of any one case.—A document authorizing a pleader to take copies of documents in the records of a collectorate, is properly stamped with a court fee of 8 annas under Schedule II Article 10 (a) of the Court Fees Act. *Reference under Stamp Act*, 9 Mad. 146 F. B. See also *Gunamoyee Devi* v. *Nabin Chandra Bandopadhya*, 1 C. W. N. 11.

Where a power of attorney is executed in favour of a person, who is not a certificated Mukhtear or pleader under the Legal Practitioner's Act, the document should be stamped with the stamp as provided for by Article 48 of Schedule I of the Stamp Act and not with a court fee stamp as provided for by Article 10 of Schedule II of the Court Fees Act. *Permanand* v. *Sat Persad*, F. B. 9 Ind. Cas. 617: 8 All. L. J. 378: 33 All. 487.

A document executed by 36 persons in favour of one of them who was a raiyat, to appear before a certain officer and receive payment of money on behalf of all, is a power of

attorney governed by Art. 50 (b) of the Stamp Act. *Reference under Stamp Act*, 9 Mad 358 F. B.

The word "case" is not defined anywhere, but it must be confined to judicial and quasi Judicial cases as opposed to transactions.

A power of attorney empowering a person who is neither a vakil nor a certificated mukhtear of a court, to represent another in a civil court is governed by Art 10 of the second schedule of the Court Fees Act The documents specified in Art 10, Sch II of the Court Fees Act are documents which are intended to be excluded from the definition of a power of attorney in section 2 (21 of the Stamp Act and are not restricted to documents given to and presented by duly certificated Mukhtears and pleaders under the Legal Practitioners' Act *Ganpat* v. *Prem Singh*, 15 Ind. Cas. 122: 108 P. W. R. 1912: 202 P L. R. 1912.

A vakalatnama authorizing a pleader to receive, during the course of a suit which he has been authorized to conduct, money or document receivable by his client in the ordinary course of such suit, or in consequence of the order or decree of the court in such suit, does not require a stamp under the Stamp Act *Anonymous Case*, 3 Cal. 767 See also *In the matter of Act XXIII of* 1869, 3 C. L R 13. See also *Shambhu Nath* v *Badri Das*, 43 All 393 19 A L. J. 183: 61 I. C. 410, where the names of the pleaders did not appear in the body of the vakalatnama

The effect of the notification No. 57 dated the 16th September, 1925 published in the Behar and Orissa Gazette of the 7th October, 1925 is to dispense with clause (3) of Rule 4, Order 3 C. P C and an advocate has now to file an appointment in writing as any other legal practitioner in the High Court. A power of appointment in writing filed by an advocate requires court fees as upon a vakalatnama under Art. 10, Schedule II of the Court Fees Act. *Sheikh Abdul Gaffar* v. *Mrs F. B Downing*, I. L. R. 5 Patna 255 ; 94 I. C. 841 ; 1926 A. I R. (Patna) ; 7 P. L. T. 213.

11. Memorandum of appeal when the appeal is not from a decree or an order having the force of a decree and is presented—	(a)—to any Civil Court other than a High Court, or to any Revenue Court or Executive Officer other than the High Court or Chief Controlling Revenue or Executive Authority,	Eight annas.

(b)—to a High Court or Chief Commissioner, or other Chief Controlling Executive or Revenue Authority.	Two rupees.

NOTES.

Amendment.—*The words "from an order rejecting a plaint or"* were omitted by section 155, (Sch. 4 of the Code of Civil Procedure, *1908) (Act 5 of 1908)*.

Local Amendments.—The article has been amended in Bengal by B. C. Act IV of 1922 for Bengal; in Behar and Orissa by B. and O. Act I of 1922 and in Madras by Madras Act V of 1922; in Punjab Act VII of 1922;

Application.—This article does not apply to an appeal filed against an order refusing execution against an alleged partner of a firm against which the decree was passed as such an order has the force of a decree under Or. 21 Rule 50 (3) and the court fees payable should be *ad valorem* under Art. 1 Schedule 1 of the Court Fees Act. *Valliappi Chetty* v. *Rungaswamy Naicger*, 8 L. B. R. 300 · 35 Ind. Cas. 429.

This article applies to petition of second appeal on the appellate side of Bombay High Court. *Ex parte Desai Kalyanarai Hukumatrai*, 4 Bom. H. C. A. C. 154.

Award.—An application to the High Court to set aside an order of the District Court, reversing an order of a court of first instance directing an award, made without intervention of court, to be filed, should be treated as an application for a miscellaneous special appeal. Such application may be made on a stamp of the value of two rupees under Art 11 Schedule II of the Court Fees Act. *Lakshman Shivaji* v. *Rama Esu*, 8 Bom. H. C. A. C. 117.

Civil Procedure Code.—A Memorandum of appeal arising out of an application under section 47 of the Code of Civil Procedure is to be stamped with a court fee of Rs 2 (Rs. 5 under the amended Act for Bengal).

N B—See Notification No. 1827 J. for Bengal published in *Calcutta Gazette*, Part I., Page 874, dated June 1, 1921, *which says that court fees are to be realized under this* article.

See also Notification No. 4650 of the Government of India, published in the *Indian Gazette*, dated 14th September, 1889, Part I., Pages 807—10.

Similar notifications have been issued by the Governments of other provinces. See notifications *infra*.

Mesne Profits.—Appeal as to the amount of liability regarding mesne profits determined in execution comes under section 244 (c) C P. C. and therefore the memorandum of appeal only requires a court fee of 2 Rupees *Itraj Kunwar* v. *Bacha Madho Kuar*, 6 O C 86 But see Order 20 Rule 12 C P. C

Orders against sureties.—See section 145 of the Code of Civil Procedure (V of 1908). The liability of surety may be enforced in execution against him and he shall, for the purposes of an appeal, be deemed to be party within the meaning of section 47 C. P C

Orders passed under section 253 C P C. and section 336 C. P. C. refusing applications for execution for amounts decreed against sureties not being decrees nor orders having the force of a decree, fall under this article and *ad valorem* court fee is not payable *Lillo Mal* v. *Harji Mal*, 72 P R. 1902.

Appeals under Indian Companies Act.—A memorandum of appeal from an order under section 58 of Act VI of 1882 (Indian Companies Act) presented to the High Court must be stamped with court fee under this Article. *Nawab of Bella Spinning and Weaving Co , Ltd.* v. *Atmaram*, (1865) P J 214

A memorandum of appeal from an order under section 214 of Act VI of 1882 (Indian Companies Act) is to be stamped under this Article, as such an order is not a decree nor an order having the force of a decree *Reference under section 28 of Act VII of 1870*, 17 All. 238: (1895) 15 All. W. N 56.

Measurement Cases.—Petitions of appeals in cases to obtain the order for measurement of lands of tenants may be made on the same stamp as for miscellaneous petitions. *Smith* v *Nundun Lall*, 6 W R. Act X 13.

But if the petitioner values his relief at a certain amount, then the memorandum of appeal must be stamped *ad valorem* on that amount and not as a miscellaneous appeal. *Oma Churn Biswas* v. *Shib Nath Bagchee*, 8 W. R. 14.

Order refusing to readmit appeal dismissed for default. —The stamp for an appeal from an order of an appellate court refusing to re-admit an appeal, dismissed for default, is one of Rs 2 under clause (d) of this article. *Musst. Kanho* v. *Sohel Singh*, 10 P. R. 1883.

Order rejecting an application to set aside an ex-parte decree.—The memorandum of appeal is to be stamped with a two rupees stamp (if to the High Court) as a summons appeal. *Parbutty* v. *Girdharee Lall*, 4 W. R. Misc. 15.

Order that party had no locus standi in execution case.—An appeal from an order of the lower appellate court, declaring that a party who claimed to be in possession of the property taken in execution of a decree to which he was no party and with which he had no concern, had no locus standi in the execution case, is in the nature of a miscellaneous appeal and should bear court fees as on an ordinary petition. *Mohesh Chandra Bannerjee* v *Chunder Monee Dabee*, 9 W. R. 139.

Remand orders.—An order remanding a case under section 562 C. P. C. (Order 41 rule 23 of Act V of 1908) is not a decree nor an order having the force of a decree within the meaning of this article; therefore a memorandum of appeal from such order falls under this article and not under Art. 1 Schedule 1 of this Act and does not require an *ad valorem* court fee. *Sadiq Mahammad* v *Gurusahai Ram*, 6 P. R. 1880.

But where a suit for possession and mesne profits is decided on the merits but remanded so that some further acts may be carried out, *i e.*, enquiry into the amount of mesne profits completed, the appeal is an appeal from a decree and not an appeal from the order of remand.

Thus where the lower appellate court, in a suit for possession and mesne profits, decreed the appeal on the merits but remanded the case of determination of mesne profits, *held*, that the appeal from the decision of the lower appellate court is an appeal from a decree and the memorandum is to be stamped with an *ad valorem* court fee. *Raghunath Das* v. *Jhari Singh*, 3 Pat L. J. 99: 45 Ind. Cas. 100. See also *Umrao Ali Khan* v. *Abdul Subhan Khan*, 5 All. L. J. 645: 28 All W. N. 40 (case of a suit for partition)

Restitution of Property.—An application for mesne profits made not by the plaintiff but by the defendants against whom the suit had been dismissed by way of restitution under section 583 C. P. C. (section 144 of Act V of 1908) is one under section 244 (c) of the Code. Such application would be chargeable with court fees under Art. 11, Schedule II of the Court Fees Act and not *ad valorem* court fees *Gangadhar Marwari* v *Lachman Singh*, 11 C. L. J. 541: 6 I. C. 125.

An order under section 144 C. P. C comes under section 47 (1) of the Code Clause (6) of the Notification of the Government of India No. 4650, dated the 10th September 1889, applies to appeals from such orders, and a court fee of rupees two is chargeable. *Madan Mohan Dey* v. *Nogendra Nath Dey*, 21 C W N 544. See also *Balmukund* v. *Basanta Kumar*, 3 Pat. 371: 1924 Pat. C. W. N. 33: P. L. T. 145: 78 I. C. 200.

An application by the judgment debtor for compensation under Section 144 C. P. C need only be stamped with a court fee of eight annas *Gobba* v *Kanchhedilal*, 67 Ind. 225 (Nagpur). See also *Sayad Hamidalli* v. *Ahmadalli*, 45 Bom. 1137: 23 Bom L. R. 480.

Applications for restitution under Section 144 C. P. C. are applications in execution *Sudali Mathu Pillai* v *Sudali Mathu Pillai and others*, 70 Ind. Cas. 173, 1923 All. I. R. 270 (Madras)

Where mortgaged properties were sold at the instance of a mortgagee-decree-holder and a prior mortgagee B was adjudged to be entitled to a share in the sale proceeds in an appeal filed under Section 47 C P C, the mortgagee decree-holder then withdrew the amount of the sale proceeds on furnishing security The prior mortgagee then applied for interest and damages against the heir of the mortgagee decree-holder B which was allowed, held on appeal that the case falls under section 47 of the Code of Civil Procedure. Therefore the B and O Government Notification No 2576 L. A. 25 of 1921 directing under section 35 of the Court Fees Act that the fee chargeable on appeals from order under section 47 C. P. C. shall be limited to the amount chargeable under schedule II Art 11 of the Court Fees Act applies Therefore the memorandum need only bear a court fee of Rs 4 *Sital Prosad Singh* v. *Jagdeo Singh*, I L R 4 Patna 294; 1925 A. I. R. 577 (Patna) 92 I C 474, 7 P L T 415

See *Contra*—An order under Section 144 C. P. C. is not on an application in execution proceedings but is a decree, hence the memorandum is to be stamped with *ad valorem* court fees *Baijnath* v *Balmukund*, 47 All 78; 22 A. L. J. 881; 82 I C 321 1924 A. I. R. 137 (All.)

12. Caveat.		Five rupees.

NOTES.

Change in Law.—The fee is raised to Ten Rupees in Bengal and Assam, Madras and Behar and Orissa, and has been amended in Bombay by Bombay Act III of 1926.

A caveat is in the nature of a precautionary measure intended to assure that there shall be no proceedings in the matter of the estate of the deceased without notice to the person who files the caveat. It is not necessary where person interested in the estate of the deceased appears upon citation, and a petition by such a party upon whom citation has been issued and who

appeared to oppose the grant, is not a caveat and need not be stamped as such *Bhabatarini Debi* v. *Hari Charan Bannerjee*, 20 C W. N. 787: 26 Ind. Cas. 38. See also *Chota Lal* v. *Bai Kabubai*, 22 Bom. 261 (265).

13. Application under Act No X of 1859, section 26, or Bengal Act No VI of 1862, section 9, or Bengal Act No VIII of 1869, section 37.		Five rupees.

NOTES.

Change in Law.—Act X of 1859 was repealed by the Bengal Tenancy Act, (VIII of 1885), *see* the reprint of the Act as modified up to 31st May, 1907, published by the Government of Bengal, in those portions of the Lower Provinces to which that Act extends and in the Chota Nagpur Division (except Manbhum and the Tributary Mahals) by the Chota Nagpur Landlord and Tenant Procedure Act, 1879 (Ben. Act. 1 of 1879), (*see* now Ben. Act 6 of 1908), Ben. Code, Vol. II; in the Province of Agra by Act 18 of 1873; and in the Central Provinces, by the Central Provinces Act, 1883 (9 of 1883), Central Provinces Code.

Bengal Act 6 of 1862 was repealed by the Bengal Tenancy Act, 1885 (VIII of 1885), so far as it affected those portions of the Lower Provinces to which that Act extends, and in the Chota Nagpur Division (except Manbhum and the Tributary Mahals) by the Chota Nagpur Landlord and Tenant Procedure Act, 1879 (1 of 1879) (*see* now Ben Act VI of 1908), Ben. Code, Vol. II.

Bengal Act VIII of 1869 was repealed by the Bengal Tenancy Act, 1885 (VIII of 1885).

The fee of five rupees has been raised to ten rupees by Bengal Act IV of 1922 for Bengal.

These sections of the old Acts correspond to section 91 of the Bengal Tenancy Act (Act VIII of 1885 B C.) and relate to suits by landlords for measurement of lands held by tenants.

14 Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866		Five rupees.

NOTES.

Change in Law.—Art 14 has been amended in Bombay by Bombay Act III of 1926 ;

15 [Rep by Act V *of* 1908 Schedule 5 which was again repealed by the second Act Repealing and Amending Act 17 of 1914 s 3] [Art 15 ran as follows —"Plaint *or memorandum of appeal in a suit for possession of a wife.*"]		
16 [*Rep by Act 6 of* 1889, s 18 (1)] [Art 16 ran as follows ·——" *Administration bond* "		*Eight rupees.*
17 Plaint or memorandum of appeal in each of the following suits —		
i to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court;		Ten rupees.
ii to alter or cancel any entry in a register of the names of proprietors of revenue-paying estates;		Ditto.
iii to obtain a declaratory decree where no consequential relief is prayed,		Ditto.
iv to set aside an award,		Ditto.
v to set aside an adoption,		Ditto.
vi every other suit where it is not possible to estimate at a money-value the subject-matter in dispute, and which is not otherwise provided for by this Act		Ditto

NOTES.

Amendment.—This article has been amended in Bengal by Bengal Act IV of 1922 ; in Assam by Assam Act II of 1922 ; also in Bombay by Bombay Act III of 1926, in Madras by Madras Act V of 1922 and Behar and Orissa by B. and O. Act I of 1922.

Summary decision.—What is a Summary decision? The words "summary decision or order" mean a decision "not made in a regular suit or appeal." *Dayachand* v. *Hemchand*, 4 Bom. 515 (521, 522) F B.

"It is the decision of a court which hears and determines the matter, but does not finally conclude the parties." *Mahtab Chand* v *Bacharaf Hazra*, 5 B L R. 162 (166), 13 W. R. 74 F B.

"The words" summary decision "mean a decision of the Civil Courts not being a decree made in a regular suit or appeal" *Ramdhan Mandal* v. *Rameswar Bhattacharjee*, 2 B L R A. C. 235 ; 11 W. R. 117.

General.—The fixed fees prescribed under this article are provisional and are liable to be supplanted, in case of selected classes of suits, by a court fee calculated on what the High Court and the Local Government considered to be a reasonable basis of valuation *Ganpatrao* v. *Laxmi Bai*, 43 Ind Cas. 64 (66—67) 15 N. L R. 24.

Clause I. *Claim cases.*—One Chhatrapat Singh was owner of two pergunnahs. He sold those properties for consideration to Bibi Phul Kumari subject to two mortgages. Bibi Phul Kumari cleared those mortgages and remainded in possession. Later on Ghanshyam Misra having obtained a money decree against Chhatrapat attached those properties and advertised them for sale in execution of his decree Bibi Phul Kumari (the appellant) objected to the attachment and applied to the Subordinate Judge of Purnea for removal of the attachment, claiming those properties as her own. Her claim was rejected. She, therefore, filed a suit and prayed that the (a) plaintiff's right and possession of the properties be declared (b) that it be declared that the said properties are not liable to be sold in execution of the decree of defendant (Ghanshyam), not to execute his said decree against the said properties of the plaintiff. The plaint was stamped with a court fee of Rs. 10 for declaration on prayer (a) and Rs. 10 for declaration on prayer (b). The Subordinate Judge dismissed the suit as the plaint was insufficiently stamped and the High Court affirmed the decision (31 Cal. 511).

On appeal the Privy Council reversing the decision of the Courts below, held "Their Lordships, however, are satisfied that there is in the statute no general or over-riding reference to value. The terms of sub-section 1 of Article 17 (which they held to apply) contain no reference to value In like manner the class of suits dealing with arbitration awards is coupled with suits such as that immediately in question ; awards may be of value Rs 10 or of Rs. 100,000 , and yet no distinction is made. In short, the statute, for good reason or bad has dealt with certain actions irrespective of value , and the present is one of them" and their Lordships held that Rs. 10 is sufficient. *Bibi Phul Kumari* v *Ghanshyam Misra*, 35 Cal. 202 ; 12 C W N 169 · 7 C L J 36 . 35 I A. 22 10 Bom. L R. 1 5 All L. J 10 17 M L J 618 . 2 M. L T 506 : 14 Bom L R 41 See also *Dildar Fatima* v *Narain Das*, 11 All. 365 : (1889) 9 All W. N 131 ; *Chunia* v *Ramdial*, 1 All 360 ; *Gulzari Mal* v *Jadaun Rai*, 2 All 63 ; *Gobind Nath* v. *Gajraj Mati*, 13 All 389 11 All W N. 139 ; *Fatima Begum* v. *Sukhram*, 6 All 341 4 All W N 113 , *Pirya Das* v. *Vilayat Khan*, 22 All 384 · (1900) 20 A. W N. 119 ; *Manraj Kuari* v. *M Radha P. Singh*, 6 All. 466 ; *Vithal Krishna* v. *Bal Krishna Janardan*, 10 Bom 610 F. B ; *Dondo Sakharam* v *Govindra Babaji*, 9 Bom 20 (In this case there was distinct prayer for possession, still the Bombay High Court held that Rs. 10 is sufficient) *Nga Seik* v. *Ngra Pu*, U. B R. (1913) 3rd quarter 181 22 Ind Cas 676 ; *Kammathi* v *Kunhamed*, 15 Mad. 288 ; *Lakshmi Amma* v *Janamajayam Nambiar*, 4 M L. J. 183 ; *Ilamdin* v *Bhagat Singh*, 12 P. L. R 1902 ; *Sardar Dial Singh* v *Beli Ram*, 51 P. R 1897.

Where an objection is dismissed under Order 21 Rule 58 C P C and the unsuccessful claimant institutes a suit under Order 21 Rule 63 C. P C. to establish his title to the property, the suit comes under Sch. 11 Art 17 Cl. 7 of the Court Fees Act. The fact that the property has been sold makes no difference so long as the plaintiff claims to be in possession and does not ask to be restored to possession or that possession be delivered to him. *Musst. Manick and other* v. *Ramjas Agarwala and others*, 3 P L T. 832 · 70 Ind. Cas 332 · 1923 All. I. R 152 (Patna)

See *contra* The test for the purpose of court fees is the value of the quantum of interest which the plaintiff wishes to establish. *Narayan Singh* v. *Ayyasami Reddi*, 1914 M. W. N. 910.

A prayer to restore an attachment is really to set aside a summary order and hence court fee of Rs. 10 is to be : " *Dayachand Nemchand* v. *Hemchand Dharamchand*, 4 Bom. 51 *Didar Fatima* v. *Narain Das*, 11 All. 365.

Claim case dismissed for default.—Art. 17 Clause I of the Second Schedule includes the case where the claim preferred is dismissed for default and a suit is brought to set aside the decision. *Satindra Nath* v. *Shiba Prasad*, 26 C. W. N. 126; (1922) A. I R. 166 (Cal.).

Clause II.—See cases, under Section 7, paragraph iv (c) of this Act, under heading "Land Registration Act."

Clause III.—Section 42 of the Specific Relief Act runs as follows:—"Any person entitled to any legal character, or to any right as to a property, may institute a suit against any person denying, or interested to deny, his right to such legal character or right, and the court may, in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit sue for any further relief.

Provided that no court shall make any declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Explanation.—A trustee of property is a person interested to deny a title adverse to the title of some one who is not in existence, and for whom, if in existence, he would be a trustee."

Illustrations (e) and (f) to section 42 of the Specific Relief Act is not exhaustive of the classes of cases in which a reversioner can sue for a declaration under the section. *Y. Surayya* v *Y. Subbamma*, 43 Mad. 4.

Section 42 of the Specific Relief Act is not exhaustive of the cases in which declaratory decrees can be made. *Veeramacheneni Ramasami* v. *Soma Pitchayya*, 43 Mad. 410: (1920) M. W. N. 393: 58 Ind. Cas. 585. See also, *Robert Fisher* v. *The Secy. of State for India in Council*, 22 Mad. 270 P. C.

The proviso to section 42 of the Specific Relief Act, forbids a suit for a pure declaration without further relief; but it does not compel a plaintiff to sue for all the reliefs which could possibly be granted, or debar him from obtaining a relief which he wants unless at the same time he asks for relief which he does not want. The expression "further relief" in the proviso to section 42 of the Specific Relief Act, means "relief in relation to the legal character or rights as to property which the plaintiff is entitled to and whose title to such character or right the defendant denies or interested to deny: it must also be relief appropriate to and necessarily consequent to the title asserted." *Jaynarain Sen Ukil* v. *Suchitra Debya*, 33 C. L. J. 592.

The extreme limit of application of proviso to section 42 is indicated in *Sardar Singhji* v. *Ganpat Singhji*, 14 Bom. 395 and *Srinivasa* v. *Srinivasa*, 16 Mad. 31.

The nature and history of declaratory suits discussed in *Deokali Koer* v *Kedar Nath*, 39 Cal. 704 : 15 Ind. Cas. 472 : 16 C W N 838.

Where the main object of the suit fails, the plaintiff is not entitled to turn round and ask for a declaration. *Rutton Monee* v *Brojo Mohun*, 22 W R. 333.

In *Idol Sri Sri Gokul Nath Jiu* v *The New Birbhum Coal Co., Ltd.*, 80 I. C. 589 ; 27 C W N. 972, the lower court dismissed the suit because the further relief has not been asked for as required by Section 42 of the Specific Relief Act, and the Calcutta High Court held, on a reference under Section 5 of the Court Fees Act,

"It is not in the province of the court to see whether the suit is properly framed, whether the plaintiff is entitled to the declaration asked for, or what would be the effect if the plaintiff succeeds in obtaining a declaration as prayed for . . . The court has only to see whether it is a memorandum of appeal in a suit to obtain a declaratory decree where no consequential relief has been prayed." The High Court thought it was such a suit

Attachment—Where the prayer is simply that the property mentioned at the foot of the plaint, is the joint ancestral property of the plaintiff and not liable for attachment and sale in execution of the decree of defendant No. 4 against defendant No 1 and any other relief that the court might see fit to grant, *held*, that the suit was one for declaration only and a court fee of Rs 10 is sufficient *Gobinda Nath Tewari* v. *Gajraj Mati*, 13 All. 389.

Benami.—A suit for a declaration that the plaintiff is the real owner of a decree obtained by the defendants against a third party and praying for the decree to be transferred to plaintiff, is a suit for mere declaration in which no consequential relief is prayed for, and the latter part of the prayer is a mere surplusage. The plaint in such a suit should bear only a ten rupees stamp *Ganeshi Lal* v. *Beni Pershad*, 47 P. L. R. 1911 1 P R. 1911 : 22 P. W. R. 1911 · 9 Ind. Cas. 673.

Claim for money coupled with a Declaration.—Where the plaintiff sued for recovery of money and for a declaration of his right to be first paid out of the sale proceeds of the defendant's property as equitable mortgagee but the trial court while giving a decree for money refused the declaration sought for, *held*, that the memorandum of appeal by the plaintiff regarding the declaration sought for but refused need only be stamped with a court fee of rupees ten only, *Simla Bank* v *Narpat Rai*, 43 P. P. 1888. Where the plaintiff sued for :

share of the offerings in the temple of Baidyanathji and a further declaration to receive it from the successor in office of the defendant, in future and the trial court allowed the amount but refused the declaration, *held*, on appeal by plaintiff, that memorandum of appeal need only be stamped with a court fee of Rs. 10 for the declaration *Girijanand* v. *Sailajanand*, 23 Cal. 645

Where the plaintiff sued for a declaration that the defendants were liable to pay certain amounts and for the further declaration that the plaintiffs shall be entitled to recover those amounts when he is compelled to pay the same, it is a suit of a declaratory nature without a consequential relief and a court fee of Rs 10 is sufficient, although the case may not come under Section 42 of the Specific Relief Act. *Shekh Rafiquddin* v. *Haji Sheikh Asgar Ali*, I. L. R. 1 Pat. 1; 63 Ind. Cas. 38

Money in Bank—Where the defendant-appellant does not dispute the amount decreed but filed the appeal in order to set aside the decision that the plaintiff alone is entitled to receive the money, which is lying in a Bank, which the Bank is ready to pay to the rightful owner, a court fee under Art. 17 (iii) of Sch. II is sufficient as a mere declaration is sufficient *Mt. Uttam Devi* v *Dina Nath and another*, 1923 A. I. R. 259 (Lahore); 75 Ind Cas. 774.

Decree and deeds, null and void.—A suit in which the only prayer is to have a decree set aside as null and void is a suit for mere declaration without consequential relief and is governed by Art 17 clause iii of the second schedule of the Court Fees Act *Srimant Sagorjirao* v. *S. Smith*, 20 Bom. 736. A suit in which the only prayer is to have it declared that a certain decree is ineffectual and inoperative against the plaintiffs, is a suit for a declaratory decree without consequential relief and falls under Art 17 clause iii of the second schedule of the Court Fees Act. *Zinnatunnessa Khatun* v. *Girindra Nath Mukherjee*, 30 Cal. 788 This case was followed in *Bagala Sundari Debi* v. *Prosanna Nath Mukherjee*, 21 C. W. N. 375: 35 Ind. Cas. 797, where Mr Justice Fletcher said "The court has got to look at and see in each particular case what is the nature of the relief claimed and for that purpose, it must look at the allegations that are contained in the plaint." In this case the decree sought to be declared as not valid and binding was a purely declaratory decree. Where the suit is by a person not a party to the bond or the decree, it may properly be regarded as one for declaration only. *Arunachallam Chetty* v. *Rangaswamy Pillai*, 38 Mad. 922 (924): (1915) M. W. N. 118: 28 M. L. J. 118: 17 M. L. T. 154: 28 Ind. Cas. 79 F. B.

Decree based on fraud.—The plaintiff sued for a declaration

that a certain decree being based on fraud shall not affect his rights and for any other relief which the court might deem fit to grant The Subordinate Judge holding that this was a suit for a declaratory decree and other consequential relief, called upon the plaintiff to pay *ad valorem* court fees and on his failure to pay, rejected the plaint. On this the plaintiff appealed. *Held*, (i) that the suit as brought was one for declaration only, (ii) this suit is not maintainable without a prayer for consequential relief by way of injunction or otherwise, and (iii) that the court below ought to have allowed the plaintiff an opportunity to amend the plaint and to include necessary prayers. *Bua Ditta* v *Ladha Mal*, 2 U P. L R. 37 ; 54 Ind Cas. 833.

Trust property.—A person who is not a party to the decree may sue to have it declared void, inoperative and not capable of execution without asking for any consequential relief and the suit is not governed by Section 7 iv (c) of the Court Fees Act *Mt Nihal Devi and others* v *Rai Chuni Lal and others*, 73 Ind. Cas. 767 , 1923 A I R. 373 (Lahore).

See also, *Amin Chand* v *Sant Murli Dhar*, 18 P. R. 1913 ; 151 P W. R 1913 ; 19 Ind Cas 219. *Vellora Karuppan* v *Kallur Vengayil*, 78 Ind Cas 118 ; 1924 A I. R. 611 (Mad.).

A suit for a declaration to the effect that the properties sought to be sold in execution of the mortgage decree by the mortgagee-decree-holder are properties of the Thakurs instituted on behalf of Thakurs *who were not parties to the mortgage suit*, is a suit for declaration without any consequential relief and the plaint is to be stamped under Art. 17 iii Sch. II of the Court Fees Act (The case of *Sripal Singh* v. *Jagdish*, 20 O. C. 361 ; 65 I C 980 dist on the ground that there the suit *was by a person who was a party to the decree on the mortgage*.) *Sriram* v *Mathura Prasad*, 85 I. C. 349 ; 1925 A. I. R. 500 (Oudh).

Debutter properties.—Where the plaintiff in a suit instituted under Section 92 C P. C., asks for a temporary injunction to compel the other side to deposit money in hand in court, it is really a prayer for accounts, but the character of the suit is not thereby altered and court fees should be paid under Sch. II Art 17 iii of the Court Fees Act. *Ramanuja Naidu* v. *Alagappa Chettiar*, 47 M L J. 656 : 85 I. C 80 : 1924 A. I. R. 882 (M.).

Contract during minority of plaintiff.—A suit by a person for declaration that a certain instrument is invalid, will not necessarily be a suit for declaration with a consequential relief under section 7 iv. (c) of the Court Fees Act. It will be otherwise where the party cannot impeach the arrangement effected by the deed without having it cancelled. In this case the Karar was entered into by the adult members during the minority of the plaintiff A transaction by the Karnarvan of a Tarwad

void as against members not consenting thereto, if it is in excess of the powers of the Karnarvan. *Sankaran Nair v. Gopal Menon*, 30 Mad. 18. 1 M. L. T. 412.

Where the plaintiff is in possession.—Where in a suit to avoid a conveyance the plaintiff alleges that she is still in possession of the property, all that she is required to do is to file a suit for declaration that the deed in favour of the defendant is not her deed, and the court fee is payable under this clause, *Umaramessa Bibi* v *Januramnessa Bibi*, 27 C. L. J. 499.

Joint family property.—In a case where the prayer was. —"That the property detailed below be declared to belong to the joint family and that it be declared and established that the plaintiffs held possession of the said property in partnership with the defendant," the plaint need only be stamped with a court fee of Rs 10 *Siva Ram* v. *Naraim Das*, (1884) 4 All. W. N. 11.

The plaint, in a suit by the son, against his father and his alienees, that the alienations are not binding on him and for his future right to succeed to the zemindary after his father's death, requires a court fee stamp of Rs. 10 only. *Narayana* v. *Muttayan*, 7 Mad 134

A suit by a coparcener of a joint Hindu family for a declaration that a mortgage of joint Hindu family property effected by another coparcener, is not binding on the property mortgaged, is a suit for mere declaration falling under Art. 17 cl. iii Sch. II of the Court Fees Act *Sham Das* v. *Mahant Churn Das*, 1925 A. I. R. 90 (L.) ; 78 I. C. 722.

A suit for a declaration that certain alienation by the father of the minor plaintiffs as manager of the joint family as their guardian, are not binding on them, is a suit really one for cancellation hence falls under Section 7 IV (a) of the Amended Act, and *ad valorem* court fees are payable. *Alagon Aiyangar* v. *Sreenivasa Aiyangar*, 50 M. L. J. 406 ; 1926 M. W. N. 777: 1925 A. I. R. 1248 (M.).

Alienation by father.—Where the suit was for a declaration that a certain alienation made by the plaintiff's father should not be binding upon the reversionary interest, the plaint is rightly stamped with a court fee of Rs. 10. If in appeal the same prayer is repeated, the mere fact that the suit is decreed on condition of payment of a sum of money, does not alter its nature and the memorandum is to be stamped with the same amount. *Harbhagwan* v. *Amar Singh*, 83 I. C. 332: 1924 A. I. R. 530 (L.). See also *Hazari Singh* v. *Piran*, 92 P. R. 1900.

Landlord and tenant.—A suit by the tenant plaintiff for a declaration that he is not liable to pay more than the

amount of royalty admitted by him to the defendant landlord, is a suit for declaration without any consequential relief. Such a suit does not fall within cl 1 or cl (c) or cl IV (f) of Section 7 of the Court Fees Act.

The value of the subject matter in dispute will be the capitalised value of the difference between the plaintiff's and the defendant's claims *K. Kayrappankutti* v. *Kalliyab Thazhathveetil Qutti*, (1924) A. I. R. 621 (Mad.)

An appeal by a landlord from the decree in a suit for commutation of grain rent into money rent on the ground that the rate fixed by the lower courts was too low, falls either under Sch II Art 17 cl. iii or under Sch II Art 17 cl. vi of the Court Fees Act and must be stamped accordingly. Neither Section 7 cl (1) nor cl. (c) of the Act applies to such a case. *S P. Chinna* v *Veerappa Naidu*, 46 M L. J. 450; (1924) A I R 623 (Mad)

Appeal for declaration only.—Where a suit was instituted for a declaration with a consequential relief but the appeal is preferred by the defendants for a declaration only as to their rights, held that the appeal falls under Sch. II Art. 17 and was correctly stamped as one for declaration only. *Neko Tewari* v *Kishen Prasad*, 3 Pat. 640: 80 I. C. 563.

Two declarations.—Where the plaintiff asked for a declaration and also added a prayer for another declaration which was redundant, then the latter prayer would not convert the suit for declaration into a suit for declaration with a consequential relief *Mahabir Prasad* v. *Shyam Behari Singh*, 3 Pat. 795: 80 I C. 655 1925 A. I. R. 44 (P.).

Government Grant.—The court fees payable in respect of a claim to be declared holder of or entitled to an Ayo i-e a hereditary right to apply to Government for grants of oil-well sites in certain areas known as "Reserves" and to receive such sites from Government, is a suit for a declaration as nowhere in the plaint is anything from which it could be inferred that the plaintiff is to seek a further relief and has omitted to do so. *Ma Su Twin* v. *Fatima Bibi and another*, 1925 A. I. R. 184 *(Rangoon) F. B.*

Property in the custody of Collector.—*Under Court of Wards.*—In the plaint the plaintiff distinctly stated that he lays claim to two subjects, *i.e.*, to two kinds of property. First, a house in his possession, and second, other properties in possession of the Collector, and their value exceeded Rs. 50,000. Those properties being in the possession of the Collector it was not necessary for or allowable to the plaintiff to ask for an injunction. He was entitled to ask only for a declaration

title. *Shidappa Venkatrao* v. *Rachappa Subbarao*, 36 Bom. 628 (638) ; 14 Bom. L. R. 757: 16 Ind. Cas. 1005. *Affirmed on appeal by* P. C. in 43 Bom. 507 · 24 C. W. N. 33: 29 C. L. J. 452.

Effect of orders under s. 145 of the Code of Criminal procedure.—An order under Section 145 of the Code of Criminal Procedure has not the effect of actual dispossession of the unsuccessful party *Jhumak Kampti* v *Debu Lal Singh*, 22 C. L. J. 415.

Under s 146 of the Code of Criminal Procedure.—Suit for declaration of title to the co-trusteeship of a Chatram without asking for possession after an order of attachment under s. 146 of the Code of Criminal Procedure which was set aside by the High Court, is maintainable and not barred by s. 42 of the Specific Relief Act. *Malaiyya Pillai* v. *Thirumalai Perumal Pillai*, 21 M L. J 1022. See also *Raja of Venkatagiri* v. *Isakapalli*, 26 Mad. 410, where the Madras High Court held that such suit was one for declaration only See also *The Administration-General of Bengal* v. *Bhagwan Chandra Ray*, 15 C. W. N. 758.

In *Panna Lal Biswas* v. *Panchu Guidas*, 26 C. W. N. 432, the Calcutta High Court held "The suit though framed as a suit for possession of property cannot be treated as such, because possession was not with the defendant but with the Magistrate who is not and cannot be a party to the suit. * * The position of the Magistrate, no doubt was that of a stake holder and during the continuance of the attachment the property was in legal custody which must be held to be for the benefit of the true owners." * * * * "The defendant's possession determined upon the Magistrate's taking possession under attachment." But see *Goswami Ranchod Lalji* v. *Sri Gridhariaji*, 20 All. 120, where the Allahabad High Court thought that the suit is a suit for possession.

Reversioners.—The plaint in a suit by reversioner *during the life time of the widow* for declaration that the alienation by her is void and is not binding beyond the life time of the widow, need only be stamped with a court fee of Rs. 10. *Bakshish Singh* v. *Narain Singh*, 70 P. R. 1877.

The plaint in a suit for declaration *during the life time of the widow* that the will should not affect the reversionary right of the plaintiff need be stamped with a court fee of Rs. 10 only. *Hakim* v. *Mussamant mahtab Kour*, 109 P. R. 1893. *See also Daivachilaya Pillai* v. *Ponnathal*, 18 Mad. 459.

Where the plaintiffs sued as reversioners, after death of the widow, to the estate of B. P. to recover possession of the estate and for declaration that possession by the alienee of the estate from the widow of B is illegal and wrongful on declaration that

the plaintiffs are reversioners of B ; Held by Full Bench that the suit is one for possession only the other prayers being surplusage, and plaint need only be stamped with court fees calculated under S 7 paragraph v. of the Court Fees Act. *Ram Sumran Parsad* v *Gobind Das*, 1922, Pat C. W. N 291 ; I. L. R. 2 Pat. 125 ; 3 P. L T 704, 68 Ind Cas 700

Clause IV—Awards.—In suits to set aside summary decisions, as also those dealing with arbitration awards, the amount of court fees payable on the plaint do not depend on the value of the property *Bibi Phul Kumari* v. *Ghanshyam Misser*, 35 Cal 202 7 C L J. 36: 17 M L. J 618: 5 All. I J 10 Bom L R 1. 14 Bur. L R 41.

A suit to set aside an award by arbitrators is governed by Act 17, iv Schedule II of the Court Fees Act. The valuation should not be arbitrary but actual value of the property in dispute is to be given.

Venkatachellam Pillai v *P V Srinivasa Riyar*, 75 Ind. Cas 115 ; (1924) All. I. R. 84 (Madras).

Section 8 of the Court Fees Act being a special provision, relating to awards of compensation under the Land Acquisition Act, overrides the general provisions of Art. 17, IV., Schedule II of the Court Fees Act *Kesturi Chetty* v. *Deputy Collector, Bellary*, 21 Mad. 269

A suit for a declaration than an award is invalid and for an injunction, is a suit within Section 7, IV (c) of the Court Fees Act *Tayabally Abdul Hussain* v. *Messrs. James Finley and Co*, 80 I C 969 (Sind.).

Clause V—Adoption.—See cases under Section 7, paragraph iv Clause (a). Where upon a challenge having been made to the title of the adopted son, he comes to court with a claim for declaration of his title and recovery of possession of his adoptive father's property, the case comes under 7, iv (c). *Ugra Mohan* v. *Lachmi Prosad Chaudhuri*, 5 Pat L. J 341. 56 Ind. Cas 422.

The plaintiff sued for a declaration that he was the adopted son of one B. and therefore entitled to his property of which he was already in possession. His suit was dismissed by the first court and then he filed an appeal paying Rs. 10 as court fee on the memorandum of appeal. *Held*, that the court fee payable on the memorandum of appeal was *ad valorem* fee on the value of the property held by the appellant as adopted son and heir of B, *Ganpatrao* v. *Laxmi Bai*, 15 N. L. R. 24: 43 Ind Cas 64.

NOTE.—In Nagpore the valuation of the subject-matter of suit is calculated according to Notification under section

the Suits Valuation Act. *Notification* No. 1641, dated 28th September, 1911 (Nagpore).

A suit for a declaration, that an adoption is valid, is a suit without consequential relief but which does not on the face of it admit of being satisfactorily valued and as such it falls under the category of the suits mentioned in Clause III of Act, 17 of Schedule II of the Court Fees Act *Ganpatrao* v. *Laxmi Bai*, 43 Ind. Cas. 64: 15 N. L. R. 24.

A suit to establish an adoption independently of any claim to any property, may be filed on a court fee of Rs 10 only under this article. *Baji* v. *Raghunath*, 1876 P. J. 142.

The right of a plaintiff to bring a substantive proceeding to set aside an adoption has been recognized by Legislature in Schedule II Art. 17 Clause V of the Court Fees Act and in Art. 129 Sch. II of the Limitation Act *Kalova Kom* v. *Padapavalad*, 1 Bom. 248.

But a suit to set aside a *solenama* and thereby to recover property cannot be brought on plaint affixed with a Court Fee of Rs 10 under this Article by framing it as a suit to set aside an adoption. *Bama Soondaree* v *Soorjo Coomar*, 22 W. R. 338.

Declaration.—A suit for a declaration that the deed of adoption executed by the widow (who was alive at the date of suit) does not bind the interest of the plaintiffs as reversioners *after the death of the widow or her remarriage*, is a suit for pure declaration and not a suit for annulling adoption. *Gonga Singh* v. *Sher Singh*, 1925 A. I. R 229 (L.)

Valuation.—For the purpose of determining the jurisdiction the measure of the valuation is the loss which would accrue to the adopted son if the adoption is declared invalid *Keshava Sanabhaga* v *Lakshmi Narayana*, 6 Mad 192. But in the following cases the courts have held that the valuation for jurisdiction is the valuation put on the claim by the plaintiff. *Prohlad Chandra Das* v. *Dwarka Nath Ghosh*, 14 C. W. N. 929. 6 Ind Cas. 636; *Bai Machbai* v. *Bai Hirabai*, 35 Bom. 264 · 13 Bom L. R. 251: 10 Ind. Cas 816; *Sheo Deni Ram* v. *Tulshi Ram*, 15 All. 378: 13 All. W. N 147.

Clause VI.—*Where it is not possible to estimate at a money value the subject-matter in dispute.*—To bring a case within the expression "where it is not possible to estimate at a money value the subject-matter in dispute" in Art. 17, Cl. VI of Schedule II of the Court Fees Act, it must be established that it is not possible even to state approximately a money value for the subject-matter in dispute. *Bunwari Lal* v. *Daya Sunker Misser*, 13 C. W. N. 815 (819): 1 Ind. Cas. 670; See also *Trinayani Dassi* v. *Krishna Lal De*, 39 Cal.

906: 17 C. W. N. 923: 14 Ind. Cas. 724 *Kesvarapu Ramakrishna Reddi v Kotta Kota Reddi*, 30 Mad. 96: 16 M. L. J. 458. 1 M. L. T 311

Charitable and religious trusts.—*Public Trusts. Under Section 539 (section 92) C P C.* In a suit brought under section 539 C P C. (Act XIV. of 1882) by three Hindus alleging that a trust had been created for certain charitable and religious purposes by Rani Mahtab Kunwar, that the trustee appointed by her had committed a breach of the trust by alienating a portion of the endowed property and that the heirs of the trustee had made a gift of the trust property in favour of the person through whom the defendants now claim, the plaintiffs prayed that it might be declared that the property was endowed property They further prayed that they should be appointed Superintendents of the property and that an injunction should be issued to the defendants forbidding them to interfere with the discharge of the plaintiff's duties as Superintendents They also asked the court to grant such other reliefs as to the court might seem proper having regard to the provisions of section 539 of the Code of Civil Procedure (Act XIV of 1882) The Allahabad High Court (*Banerjee & Aikman J J*) remarked—"A suit under that section is brought for the protection and preservation of endowed property, and it is safeguarded by the rule which requires that it must be brought by the Advocate-General himself, or with the consent of the Advocate-General or such other officer as the Local Government may appoint in this behalf. Instances may often arise in which the trust property is of considerable value If court fees had to be paid with reference to that value whenever it was found necessary to bring a suit to remove a trustee who had committed a breach of his trust, such court fees might be prohibitive and might prevent institution of the suit. In this case the learned Judge below treats the suit as "obviously a suit for possession" We are unable to agree with his view of the nature of the prayer in the plaint. The plaintiffs seek possession of the property. Although they ask that they may be appointed Superintendents they might never be appointed to that office The Judge might see fit to appoint some other persons as trustees or Superintendents, and no occasion might arise for the plaintiffs taking possession of the property. It might also not be necessary to eject the defendant. If the declaration sought for be made, the defendants might themselves cease to interfere with the property. In our opinion, therefore, the learned Judge below was not right in holding that this was necessarily a suit for possession. The learned Counsel *for the respondent cited to us the case of Delroo Banoo Begum* v. *Ashgar Alley Khan* (15 B. L. R. 167:

W. R. 453 P. C.). That was no doubt a suit similar to the one before us in so far that the plaintiff in that suit asked to be appointed *mutawallis*, that in that case there were emoluments attached to the office of the *mutawalli*, and by reason of these emoluments being capable of valuation it was held that the suit was not in which the subject-matter could not be valued * * * In our judgment the suit as framed embraced a claim for a declaratory decree to the effect that the property in suit was endowed property. For that portion of the claim the amount of court fees was Rs. 10. It also embraced a prayer for appointment of the plaintiffs as trustees In our opinion it was impossible to estimate at a money value that prayer in the plaint Consequently the amount of court fees payable for that portion of the claim was Rs 10 under Clause VI, Art 17 of the Second Schedule of the Court Fees Act "

There was a further prayer for an injunction which was separately assessed and separate court fees paid on that assessment *Thakuri and others* v. *Brahma Narain and others*, 19 All. 69.

The above case was followed in the case of *Giridhar Lal* v. *Ram Lal*, 21 All. 200, where the same learned Judges held that the mere fact that the plaintiffs in the suit under section 539 Civil Procedure Code, may ask for an account to be taken from the trustee and that the trustees may be compelled to refund monies alleged to have been misappropriated by them, does not take the case out of the purview of Art. 17, Clause VI, Schedule II of the Court Fees Act and render the plaintiff liable to pay *ad valorem* court fees on that part of the plaint as the prayer for accounts is ancillary to the substantive prayer in the plaint, *i.e.*, that the trustees may be removed and new trustees appointed in their place and that the properties be vested in them. See also *Ghazaffar Hussain Khan* v. *Yawar Hussain*, 28 All. 112 ; 2 A. L. J. 591 ; 1905 A. W. N. 28.

"A suit under section 539 generally involves a question upon which no pecuniary value can be placed ; and it is obvious that this is so, if we look at the effect of such a suit. The juridical person who is in possession of the only property which can have any value is the idol, and if the shebait who is alleged to have neglected his duty and to have embezzled the idol's property is sought to be removed and another manager put in his place, it cannot be said that this is a suit involving the value of any portion of the idol's property. It may be a very good thing for the idol if he succeeds, it cannot therefore be said that the plaintiff is bound to value his relief at any fixed sum." *Ram Rup Das and others* v. *Mohunt*

Siyaram Das and others, 14 C W. N. 932: 12 C. L. J. 211: 7 Ind. Cas 92.

The Allahabad High Court held that "all the plaintiffs in such a suit can obtain, is a decree appointing a trustee or trustees, declaring what properties are affected by the trust and direct the trustee to bring those properties into possession. If the trustee appointed by the court is resisted in his attempts to get possession of the trust property he must then bring a suit for possession in the proper court on payment of the full court fees for a suit" *Ghazaffer Hussain Khan* v *Yawar Hussain*, 28 All 112 25 All W N 28· 2 All L J 591; but if emoluments be attached to the office of a trustee in the endowment then the plaint in the suit to remove the trustee must be stamped with *ad valorem* court fees. *Delroos Banoo Begum* v *Ashgar Ali Khan*, 23 W R. 453: 15 B. L. R. 167 P C.

A suit for dismissal of a trustee and for recovery of trust property from the hands of a third party to whom the same property has been improperly alienated is within section 539 C P C (section 92 of Act V of 1908). *Sajedur Raja Chowdhury* v *Gour Mohun Das Baishnav*, 24 Cal 418 (426); *Sajedur Raja* v *Baidyanath Deb*, 20 Cal. 397; *Mohiuddin* v *Sayiduddin*, 20 Cal 816; *Chintamon Balaji Dev* v. *Dhondo Ganesh Dev*, 15 Bom 612; *Ghazaffar Hussain Khan* v. *Yawar Hussain*, 28 All 112· 25 All W N. 28: 2 All L. J 591; *Subbayya* v *Krishna*, 14 Mad. 186

In a suit for recovery of the office of a trustee and injunction which is substantially valued and the actual possession being with the tenants who are willing to pay rent to the proper trustee, a prayer by the plaintiff for possession is unnecessary *Ramadoss* v *Hanumantha Rao*, 36 Mad. 364: 21 M L J 952 12 I C 449.

In a suit with the leave of the Collector to remove a Mohunt from the office and delivery of property to the new Mohunt, the plaint need not be stamped with court fees *ad valorem* on the value of those properties. *Gopi Das* v. *Lal Das*, 97 P R 1918 47 Ind. Cas 983: 173 P. W. R. 1918

Religious Endowment Act.—In suits under section 14 of the Religious Endowment Act, the plaint is to be stamped with a court fee of Rs 10 *Veerasami Pillay* v. *Chokappa Mudalier and others*, 11 Mad 149 *Note*; but if it be coupled with a claim for damages then *ad valorem* court fees on that claim is payable *Srinivasa* v. *Venkata*, 11 Mad. 148 (151)

Suits under section 14 of the Religious Endowment Act are incapable of valuation *Muhammad Siraj-ul-Huf* v. *Imamuddin*, 19 All. 104: (1896) 16 All. W. N. 189.

Other Cases.—In a suit for a declaration that the present Jheer of the Math is not a duly appointed Jheer and that an appointment to the vacant office of Jheer be made by court, *held,* "the suit is not maintainable as the plaint does not ask for a consequential relief they are entitled to ask, *viz.,* that some duly qualified person be appointed as the head of the math and approved by the court and that the math and its properties be handed over to the person so appointed, the defendant being ejected therefrom." In this case the defendant was in possession of the property. *Srinivasa Ayyanger* v. *Srinivasa Swami,* 16 Mad. 31.

The plaint in a suit to remove a Karnarvan from the management of the tarwad property is to be stamped with a court fee of Rs. 10 as the claim is incapable of valuation *Govinda Nambia* v. *Krishna Nambier,* 4 Mad. 146 ; *Narangoli Chirakal Kuntal Rausan* v. *Narangoli Chirabai Puttala tha Kumharj Nambiar,* 4 Mad. 314 ; *Krishna* v. *Raman,* 11 Mad 266.

The plaintiffs in a representative suit claimed to have an exclusive right to manage certain Debsthanams mentioned in the plaint and to appoint and remove a Dharmakarta for those temples whenever occasion arises They prayed for a declaration accordingly and asked for delivery of possession by defendants Nos 1 and 2 of all the properties of the suit temples and for payment of certain amounts that may be found due on examination of accounts of the income and expenditure A Full Bench of the Madras High Court held that there is no market value of the properties which are very ancient institutions ; hence, the memorandum of appeal is to be stamped with a court fee under Sch. II Art. 17 (6) of the Court Fees Act *Raja Gopala Naidu* v. *Ramsubramania Aiyar,* 1923 M. W N. 550 (553) ; 46 Mad. 782 ; 74 Ind. Cas. 198 ; (1924) A I. R. 19 (Madras) F. B.

Where the plaint was under section 92 C P. C. and in it the plaintiff prayed that the defendants should be made to refund *to the trust* the sum of Rs. 11,000 at which figure the plaintiff estimated the amount of money misappropriated by the defendants, held that as the plaintiff does not claim any beneficial interest in the sum but only says that the trustees should be asked to make good to the trust itself that amount of money and hand over possession of the immovable property, the suit falls under Art. 17, vi. of schedule II of the Court Fees Act. *Sudalimutha Pillai* v. *Peria Sundaram Pillai,* 48 M. L. J. 514.

The Kyaung cannot be transferred by sale, mortgage or gift and it can, therefore, have no market value in the ordinary

acceptance of the term A suit, therefore, by a Hfungyi to recover possession of a Kyaung falls under Art 17, Clause VI of Schedule II to the Court Fees Act and the plaint is to bear a court fee stamp of Rs. 10. *V. Konna* v. *Einda*, 13 Bur. L. T. 40 57 Ind. Cas. 953

Where a suit was brought against the matwalli and Imam of a mosque on the ground that the said matwalli has turned a follower of the Mirza of the Quadiri sect, therefore cannot continue to be matwalli and Imam of the mosque which belongs to the Hanafi sect, and prayed that the defendant be declared unfit for the office of the Imam of the Masjid ; that he be ejected from the property appurtaining to the Masjid ; that he be dismissed from the office of the matwalli. *Held*, that since the plaintiffs simply seek the removal of the defendant from the office of the matwalli, which would involve his ejectment from the immovable properties of which he is in possession as matwalli, full stamp need not be given upon the value of the said property *Mir Yad Ali* v *Mouli Mubarak Ali*, 37 P. W. R. 1908 · 53 P. R. 1909: 2 Ind. Cas. 107: *See—Bawa Mangal Das* v *Mahant Niranjan Das*, 56 P. R 1895.

Contra-adverse claim.—Where the plaintiff sued for a declaration that he is the *Sajjadanashin* of the two dargas in dispute and for possession of the dargas and the darga properties, held that Art. 17 (b) of Sch II of the Court Fees Act does not apply as the defendants claim adversely to the plaintiff though not adversely to the trust and that *ad valorem* court fees are payable under section 7 paragraph 5 of the Court Fees Act *Syed Mahamed Gouse* v *Government*, 1925 M W N 252 ; 48 M L. J. 572.

Interest. —The plaintiffs in whose favour a decree for sale in a suit on a mortgage has been passed allowing interest up to the date fixed for payment of the mortgage money, appealed on the ground that the interest should have been allowed up to the date of realization. *Held*, that the proper court fee payable on the memorandum of appeal was Rs 10 as provided by this clause *Bhawani Prasad* v *Kutubunnessa Bibee*, *27 All. 559: 2 All. L. J. 263: 25 All. W. N. 84.*
See also other cases noted at page 235, *supra*.

Letters of Administration and Probate.—The court fee payable on an appeal from an order by the District Judge refusing grant of Letters of Administration with a copy of the will annexed, is Rs 10 under Art. 17, cl. vi of the Court Fees Act as it is impossible to estimate at a money value the subject-matter of appeal. *Miss Eva Mountstephen* v. *Mr. Hunter Garnett Orme*, 35 All. 448: 25 Ind. Cas. 98.

Partition.—See notes under section 7 (iv) (b) and 7 (iv) (c).

Where a suit for partition fails because all the properties are not included in the suit, the plaintiff is not entitled to turn round and ask for a declaration. *Ruttun Monee* v. *Brojo Mohun*, 22 W. R. 333.

Where the plaintiff in a suit for partition, is found to be out of possession, he can amend the plaint if the facts permit such a thing being done and pay *ad valorem* court fees. *Rebati Raman* v. *Harish Chandra*, 24 C. W. N. 749.

In appeals from partition suits the memorandum is, to be stamped in the same way as plaint in original suits. *Krity Chunder Mitter* v. *Anath Deb*, 8 Cal 757: 11 C. L. R. 95. where Garth C. J. said at page 758—"If the plaintiff's suit had been to recover possession of or establish his title to, the share which he claims in the property, he must have paid an *ad valorem* stamp fee upon the value of that share. But, as I understand, he is already in possession of his share, and all that he wants, is, to obtain a partition which is merely as explained by the learned Judge in the case of *Rajendra Lall Gossami* v. *Shama Churn Lahoory* (4 C. L. R. 418) to change the form of enjoyment of the property, or in other words, to obtain a divided, instead of an undivided share, it seems to be impossible to say what will be the value to the plaintiff of the change in the nature, of two properties for the purposes of jurisdiction, to be guided by the value of the property, in suit, but the amount of stamp fee is governed by a different principle."

Suit by plaintiff in joint possession to have his share partitioned.—See *Tarachand* v. *Afzal Beg*, 34 All. 184: 8 A. L. J. 1329: 13 Ind. Cas. 185; *Reoti* v. *Lachhman*, 20 A. W. N. 90; *Kirtee Chunder Mitter* v *Anath Nath Deb*, 13 C. L. R. 253; *Ahamuddin Tamijuddin* v. *Amiruddin*, 44 Ind. Cas. 216 (Cal); *Sripati* v. *Shridhar*, 15 C. P. L. R. 120; *Har Charan Das* v *Sukhraj Das*, 62 Ind. Cas. 979 (Punjab). See also *Sashi Bhusan Beed* v. *Rai Jatindra Nath Chowdhury and others*, 15 C. L. J 443: 10 Ind. Cas. 463 where the lower appellate court regarded a suit for partition as one for declaration of title and recovery of possession and the plaintiff amended the plaint and paid *ad valorem* court fee on the value of the property in suit but the High Court set aside the order and ordered retrial on the pleadings as they stood before the amendment. This view was taken by Nagpur Court in *Manaji* v. *Sitaram*, (1924) A. I. R. 105 (*Nagpore*); 81 I. C. 643; *Bhaddoo* v. *Sadoo*, 81 I. C. 766.

Where the subordinate Judge returned the plaint in suit

as being insufficiently stamped, on the ground that, in as much as the whole of the property sought to be partitioned does not appear to have been property which descended from an ancestor of the parties the suit is something more than a partition suit, in as much as the plaintiff's right to share in *this property at all will have to be enquired into in it, held,* as the only relief which is sought is the partition of the property which the plaintiff says he is in possession, the Court Fee is payable under this clause of this Article *Mohendra Chandra Ganguli* v *Ashutosh Ganguli*, 20 Cal 762 (764, 765) See also *Rajani Kanta Bag* v *Rajabala Dassi*, 52 Cal. 128 ; 40 C L J 150, 29 C W N 76, 1925 A I R 320 (C.) ; 85 I C. 898, where it was held that merely because a question as to title is necessary to be determined makes no difference to its being a partition suit

The plaint in a suit for partition and separate possession, by a person claiming to be in joint posession of the property requires a stamp of Rs 10 The decision as to the amount of court fees should be based solely on the consideration of the cause of action on which the plaintiff is suing ; denial by the defendant that the plaintiff was in joint possession does not alter the character of the suit *Mongammal* v. *Tolaram*, 6 S L R 72 · 16 Ind Cas 773 See also *Haji Yusuf* v. *Ghulam Hussain Kassim*, 6 S L R 74 (Notes) : 16 Ind Cas 771 *Kripal Singh* v. *Sant Singh*, 71 P. R. 1911 : 13 Ind. Cas. 305.

Where the plaintiff in a partition suit wants only his share to be separated then the value of the suit is the value of the share, but when the share of all the shares are partitioned, then the value of the suit is the value of the property sought to be partitioned *Har Charan Das* v. *Sukhraj Das*, 62 Ind Cas 979 (Punjab).

The court fees payable should be determined by the allegations in the plaint and not on the footing of what is *afterwards decided by the court.*

Where properties stand in the name of the strangers it is necessary for the Plaintiffs to displace the title of strangers, and therefore it is obligatory on them to pay *ad valorem* court fees *Banku Behary* v. *Chatur Pandey*, 1924 A. I. R. 640 (P.)

Moveable property and accounts.—The plaint in a suit for partition of joint family business and of immovable and moveable property and accounts is to be stamped with court fees under this clause, but separate court fees are payable on claim for accounts *Beni Madhav Sarker* v. *Govinda Chandra Sarkar*, 22 C. W. N. 669 : 46 Ind. Cas. 105.

Partition among co-tenants—A suit for partition

co-tenants by a person alleging himself to be already in joint possession as a co-tenant is a suit whose subject-matter is incapable of valuation within the meaning of Art. 17, Clause 6 of Schedule II of the Court Fees Act 1870. *Gill v. Varadaraghavayya*, F. B. Mad. 396: 38 M L. J. 92: 11 L. W. 174: (1920) M W. N. 124: 27 M. L. T. 146; Ind. Cas. 517.

Partition in Burma.—The plaint must be stamped with a court fee according to the plaintiff's valuation of his share *Maung Shwe Bon* v *Maung Pu*, 9 Bur. L. T. 97: 35 Ind Cas 731.

Partition among Mussulmans.—In a suit for partition of inheritance of the joint property of the parties, the lower courts refused to give one of the defendants, though he asked for it, his share, which was found and admitted to be a third. The reason given by the trial court was that the court fees paid by the plaintiff was only in respect of his third share and the reason given by the lower appellate court was that it was not a suit for partition of joint family property among Hindus The High Court on appeal held that a suit for partition by Hindus is hardly distinguishable from a suit for partition by Mussalmans and awarded the defendant his share to be ascertained and given to him in execution on payment of the necessary court fees and expressed an opinion that it is undesirable to drive the parties to a further litigation. *Abdul Kader* v. *Bapubhai Valad Sheikh Imam*, 23 Bom. 188: (1898) P. J. 135. *Haji Yussuf* v. *Ghulam Hussain Kasim*, 6 S. L. R 74 (note), 16 I. C. 771; *Ahammuddin Tamijuddin* v. *Amiruddin*, 44 Ind. Cas 216.

Where the plaintiff in a suit for partition of immovable property is a *Mehomedan* and is not a member of a joint family but is in joint possession the article applicable is Art. 17 Cl. 6 as in law her possession of some of the properties is indicative of her joint possession of other properties in which she claims a share; such a suit does not come under Section 17 cl. vi of the Court Fees Act. *Kurshit Kathum by Agent, etc.* v. *Hyder Sahib and others*, 1924 A. I. R. 207 (Mad.); 75 Ind. Cas 93; 1923 M. W. N. 565.

Objection to an order to put in a properly stamped petition.—In an appeal by the appellants where they objected to the order of the lower court directing the defendants to put in a properly stamped application if they wanted to have their shares separated, the memorandum is to be stamped with a court fee of Rs 10 only. *Mussammat Mashkurunnissa* v. *Hashamatullah*, 20 Ind. Cas 177.

Decree in a partition suit.—Decrees in partition suits are

to be stamped under the stamp Act. *Sheikh Rafiuddin* v. *Latif Ahmed*, 14 C W. N 1101 ; 12 C. L. J 324 ; 7 Ind. Cas 94.

An award or decree directing a partition, is an instrument of partition within the meaning of Section 2 (15) of the Stamp Act 1899, *Tadepatti Reda Nagabhusanam* v. *Tudepatti Pitchayya*, 6, L W. 448.

Award by arbitrators without objections.—The memorandum of an appeal objecting to the decree of the lower court on the ground that the award made in *the partition suit* was made without hearing their objection by the objectors, is to be stamped with a court fee of Rs 10, *Lila Ram* v. *Mukand Rai*, 1 P L R 1913 229 P W R 1912 15 Ind. Cas. 57.

Liability to partition.—The plaintiff sued for a declaration that certain property is his absolute property and was not liable to partition *Held*, under Art, 17 of the Second Schedule of the Court Fees Act (Act VII of 1870) the court fee payable is one of Rs 10 only *Sohan Singh* v. *Devi Singh*, 115 P W. R 1918 · 46 Ind Cas. 1918. 119 P. L. R. 1918: 81 P R 1918

Mode of enforcing a decree.—A memorandum of appeal filed against the mode of enforcing decree of the lower court and not attaching the decree as a whole, is to be stamped under Article 17 (b) of Schedule II of the Court Fees Act. *Radha Krishna* v *Mehtale Mian and others*, 1925 A. I. R. 496 (Lah.).

Devolution of interest pending suit.—Where the court decided that the plaint is properly stamped as a plaint in a suit for partition, the fact that during the course of the suit the defendant died and his sons were substituted in his place and that the plaintiff himself sold a portion of the property to others who were made co-plaintiffs, does not convert the suit for partition into a suit for possession requiring *ad valorem* court fees, *Harihar Prasad Narain Das* v. *Moheswari Prasad Narain Das*, 1925 A I R 47 (P.)

Receiver.—In a suit for an injunction and for the appointment of a receiver, no money value can be put upon such a claim for the appointment of a Receiver, as there is no standard for fixing the same. *Manmatha Nath Biswas* v. *Rohilli Moni Dassi*, 27 All. 406 2 All L. J. 84: 25 All W. N. 6.

But if the appointment be asked as a consequential relief to a declaration, then *ad valorem* fee is payable. *Dodda Sonackappa* v. *Sakravva*, 36 Ind. Cas. 831.

Restitution of Conjugal Rights.—For the purposes of the Court Fees Act a suit for restitution of conjugal rights without any declaration, falls within Clause VI of Article 17 of the Second Schedule of the Court Fees Act as Art. 15

been repealed and as such suits are incapable of proper valuation, and the proper amount of court fees chargeable is Rs. 10. *Aisha* v. *Fayaz*, 8 All. L. J. 889: 11 Ind. Cas. 186. For other cases see page 86 *supra*.

Mortgage.—A memorandum of appeal against a decree absolute for redemption on the ground that the mortgage money has been deposited by the mortgagor after the period fixed for its payment and should not have been received, requires a stamp of Rs. 10 under Article 17 (vi) of Schedule II of the Court Rees Act, as the relief sought in appeal cannot be exactly valued. Such an appeal does not require a stamp on the amount of the principal money. *Dadnoo* v. *Somenath*, 7 N. L. R. 41: 10 Ind Cas. 736.

The principle in *Devidas* v. *Ramlal*, 7 N. L. R. 190; 13 Ind. Cas. 864 would apply to a suit for cancellation of a mortgage decree, but where the decree to be cancelled leaves the defendant the right and opportunity to obtain another similar decree on the same mortgage in a properly framed suit, a suit for cancellation of such a decree comes under Art. 17 Cl. vi of Sch II of the Court Fees Act. *Mahadeo Ganesh Soknoi* v. *Sadasshiv and Mahadeo*, 78 I. C. 437; 1925 A. I. R. 66 (1) (Nagpore).

Absence of necessary parties.—Where the appellant (defendant) does not appeal against the amount decreed but only against omission of a necessary party, the court fee payable is Rs. 10. *Dadnoo* v. *Somenath*, 7 N. L. R. 41: 10 Ind. Cas. 736; but see *Barakatunnissa Begam* v. *Qamarun-nissa*, 50 Ind Cas. 279, where it was held that if the appellant wants to set aside a final decree in a mortgage suit on the ground that necessary persons are not parties to the preliminary decree the memorandum of appeal must be stamped with court fee calculated *ad valorem* on the decretal amount.

Registration Act.—*In Chunnamul Johore* v. *Brojonath Ray*, appeal from Original Decree, 144 of 1881, the question was whether the defendant was or was not a minor at the time when he executed the deed, and whether the deed as against him was a valid document and the court held *ad valorem* court fee is payable on the valuation of the property comprised in the deed. This case was considered in *Jantoo* v. *Radhanath Das*, 8 Cal. 515, and *Garth C. J.* said "I have had great doubt about this question. But having regard to what appers to be the general opinion of the Judges, and also the inconvenience that would arise, if the stamp fee upon such appeals were to vary according to the nature of the issue raised in each, I think it will be advisable to order that a uniform court fee of Rs. 10 should be charged in all such cases"

See also *Dwijendra* v. *Joges Chandra*, 39 C. L. J. 40 (48).

"The proper fee payable on a plaint and memorandum of appeal against a decree in a suit to enforce registration of a document is a fixed fee of Rs 10, and not an *ad valorem* fee upon the value of the property comprised in the document as the suit is one which it was not possible to estimate at a money value. *Sovarimuthu Pillai* v. *Alagiam Pillai*, 25 Mad. 103 · 12 M. L J 88, *followed in Ramu Aiyar* v. *Sankara Aiyar*, F. B. 17 M L. J. 573 13 Mad 89 . 3 M L T. 73. See *contra*, *Pydal Nambiar* v *Kannan Nambiar*, 12 M. L. J. 87, where it was held that the suit comes under section 7 (iv) (c) and *ad valorem* court fee is payable

A suit under section 77 of the Registration Act requires a Court Fee Stamp of Rs 10 *Mahomed Zakaria* v. *Mussammat Fatima*, 21 P. R 1895.

Suit to direct registration of will—Court fee is payable under this clause as it is impossible to estimate at a money value the subject-matter of suit *Ramu Aiyar* v *Sankara Aiyar*, 31 Mad 89 3 M L T 73 : 17 M L. J. 573 F. B.

Rejection of a claim under Madras Forest Act.—An appeal to the District Court from rejection of a claim by a Forest Settlement Officer under Clause 2 of Section 10 of the Madras Forest Act, 1822, falls under Art 17, Clause 6 of Schedule II and not under Art II (a) Second Schedule of the Court Fees Act *Kamaraja* v *Secretary of State for India*, 8 Mad. 22

18. Application under Second Schedule, Rule 17, of the Code of Civil Procedure, 1908.	Ten rupees

NOTES.

Alteration.—The reference to section 326 of Act VIII of 1859 has been altered in accordance with section 158 of Act V of 1908

Amendments.—This article has been amended in Bombay by Bombay Act III of 1926.

The Second Schedule referred to above deals with applications for filing in court of agreements to refer to arbitration any difference between the parties thereto.

19 "Agreement in writing stating a question for opinion of the Court under the Code of Civil Procedure, 1908"	Ten rupees.	—

NOTES.

Amendment.—The above words were substituted by "the Code of Civil Procedure (Act V of 1908) Section 155 and the fourth schedule.

For such agreements see Order 36, Rule 1 C. P. C.

Local Amendment.—This article has been amended in Bombay by Bombay Act III of 1926.

20. Every petition under the Indian Divorce Act, except petitions under Section 44 of the same Act, and every memorandum of appeal under Section 55 of the same Act.	Twenty rupees.

NOTES.

Amendments.—This article has been amended in Bombay by Bombay Act III of 1926.

Indian Divorce Act is Act IV of 1869.

21. Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1865	Twenty rupees.

NOTES.

Amendments.—This article has been amended in Bombay by Bombay Act III of 1926.

SCHEDULE III.

(See Section 19-I.)

FORM OF VALUATION (TO BE USED WITH SUCH MODIFICATIONS, IF ANY, AS MAY BE NECESSARY).

IN THE COURT OF

Re Probate of the Will of , *(or Administration of the Property and Credits of* *), deceased.*

solemnly affirm
make oath

and say that I am the executor (*or* one of the executors, *or* one of the next-of-kin) of deceased, and that I have truly set forth in Annexure A to this affidavit all the property and credits of which the above-named deceased died possessed or was entitled to at the time of his death, and which have come, or are likely to come, to my hands.

2. I further say that I have also truly set forth in Annexure B all the items I am by law allowed to deduct.

3. I further say that the said assets, exclusive only of such last-mentioned items, but inclusive of all rents, interests, dividends, and increased values since the date of the death of the deceased, are under the value of....................

ANNEXURE A.

VALUATION OF THE MOVABLE AND IMMOVABLE PROPERTY OF . . . . . . , DECEASED.

Cash in the house and at the banks, household goods, wearing apparel, books, plate, jewels, &c.

(State estimated value according to best of Executor's or Administrator's belief.)

Property in Government securities transferable at the Public Debt Office.

(State description and value at the price of the day; also the interest, separately calculating it to the time of making the application.)

Immovable property consisting of ... ...

(State description, giving, in the case of houses, the assessed value, if any, and the number of years' assessment the market-value is estimated at, and, in the case of land, the area, the market-value and all rents that have accrued.)

Leasehold property ... ...

(If the deceased held any lease for years determinable, state the number of years' purchase the profit rents are estimated to be worth, and the value of such inserting separately arrears due at the date of death, and all rents received or due since that date to the time of making the application.)

Property in public companies .. ...

(State the particulars and the value calculated at the price of the day; also the interest separately, calculating it to the time of making the application.)

Policy of Insurance upon life, money out on mortgage and other securities, such as bonds, mortgages, bills, notes, and other securities for money.

(State the amount of the whole; also the interest separately, calculating it to the time of making the application.)

Book debts .. ..
(Other than bad.)
Stock in trade .. ..
(State the estimated value, if any.)
Other property not comprised under the foregoing heads ... ...
(State the estimated value, if any.)

Total ...

Deduct amount shown in Annexure B not subject to duty

NET TOTAL ...

ANNEXURE B.

SCHEDULE OF DEBTS, &c.

Amount of debts due and owing from the Deceased, payable by Law out of the Estate ... ...
Amount of funeral expenses ... ...
Amount of mortgage-incumbrances ... ...
Property held in trust not beneficially or with general power to confer a beneficial interest.
Other property not subject to duty ... ...

Total ...

NOTES.

Sch. III has been inserted by the Court Fees Amendment Act (XI of 1890), section 3, the original Sch. III ("Enactments Repealed") having since been repealed by Act XIV of 1870.

Annexure B.—Trusts referred in Annexure B to Schedule III of the Court Fees Act as exempt from duty are trusts not created by the testator's will to take effect after his demise but trusts held not beneficially by the testator during his life time. *Chandrabati Koer* v. *Collector of Darbhanga*, 2 Pat. L. J. 611: 45 Ind. Cas. 578.

Other Property not Subject to Duty.—The words "other property not subject to duty" do not cover a case of a son applying for Letters of Administration in respect of property standing in the name of the deceased father although the same may be ancestral, joint, undivided property. *Per Miller J.*—"Ancestral joint family property passing to the applicant is property of the deceased within section 4 of the Probate and Administration Act." *In Re Dasu Manavalla Chetty*, 33 Mad 93 6 M. L. T. 286: 19 M. L. J. 591: 4 Ind Cas. 1064 F. B. See also *In the Goods of Foreschman*, 20 Cal. 575.

Property held in trust—Means property held in trust by the testator and not the property of which he created a suit. *The Deputy Commissioner of Singhbhoom* v *Jagadish Chandra Deo Dhabal*, 6 Pat. L. J. 411: 62 Ind. Cas 573.

THE

SUITS VALUATION ACT, 1887.

[*11th February, 1887.*]

[ACT NO. VII OF 1887].

As modified up to December, 1926.

An Act to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of courts with respect thereto.

Whereas it is expedient to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto, It is hereby enacted as follows:—

Title. **1.** This Act may be called the Suits Valuation Act, 1887.

NOTES.

Extent. —For Statement of Objects and Reasons, *See* Gazette of India, 1886, Pt. V p. 791 ; for Report of the Select Committee *see ibid*, 1887, Pt. IV. p 18 ; and for Proceedings in Council *see ibid*, 1886, Supplement, pp. 1131 and 1155, and *ibid*, 1887, Pt IV. pp 16 and 21.

This Act has been declared in force in Upper Burma (except the Shan States) by the Burma Laws Act, 1898 (XIII of 1898), *see* section 4 and the First Schedule.

It had previously been extended there, by notification under section 5 of the Scheduled Districts Act, 1874 (XIV of 1874), printed in General Acts, Vol. II, Ed. 1898, p. 477 *see* Burma Gazette, 1888, Pt. I. p. 362, and Gazette of India, 1888, Pt. I. p. 371.

It has been declared in force in British Baluchistan by the British Baluchistan Laws Regulation, 1890 (I of 1890).

Part I of the Suits Valuation Act empowers the Government to make rules for determining the value of

for purposes of jurisdiction in certain classes of suits, Part II declares that in suits not coming within paragraphs v, vi, ix and paragraph x cl. (d) of section 7 of the Court Fees Act, the value as determinable for the computation of Court Fees and the value for the purposes of jurisdiction shall both be the same *Musst. Ladli Begum* v. *Ram Das and others*, 1925 A. I. R. 488 (Patna).

PART I.

SUITS RELATING TO LAND.

Extent and commencement of Part I

. This Part shall extend to such local areas, and come into force therein on such dates as the Governor in Council, by notification in the Gazette of India, directs.

NOTES.

Extent.—Part I of the Act has, under section 2 been declared to extend to the Punjab, which then included the North-west Frontier Province, and to come into force therein on the 1st day of March, 1889, *see* Gazette of India, 1889, Pt. I, p. 107.

General.—A suit ought to be valued for the purpose of determining the jurisdiction of a Court, not according to the special rules of the Court Fees Act but according to the market value of the subject of a suit. *Kalu Bin Bhiwaji* v. *Visram Mawaji*, 1 Bom. 543; *Nanhoon Singh* v *Toofanee Singh*, 20 W. R. C R. 33: 12 B. L. R. 113.

The value of the subject matter of dispute.—The actual value of the estate, to which the plaintiff claims to be entitled, and not the value which it may eventually represent to the plaintiff, is the value of the subject matter. *Bai Mahkor* v. *Bulabi Chaku*, 1 Bom. 538.

But the case is different when the suit falls under section 8 of the Suits Valuation Act. Then the valuation for the purposes of jurisdiction and for the purposes of court fees shall be the same as a method of valuation for the purposes of court

fees is prescribed by the Court Fees Act itself. *Sailendra Nath Mitra* v *Ram Charan Pal*, 34 C L. J. 95: 25 C. W. N. 168: 66 Ind. Cas 26.

Prima facie the valuation by the plaintiff determines the jurisdiction If the defendant did not raise any objection then it cannot be said that the trial was without jurisdiction. *Khundaijat-ul-kubra* v. *Amina Khatun*, 46 All. 250.

Prima facie it is the valuation by the plaintiff which determines the jurisdiction and such jurisdiction continues, whatever the event, unless a different principle, comes into operation to prevent such a result *Sarada Sundari* v. *Akramunnessa*, 51 Cal 137: 78 I C 747. 28 C. W. N. 710.

Jurisdiction—How determined.—Jurisdiction of suits is governed by statements made in the plaint and has no reference to the plea set up by the defendant The valuation given in the plaint determines the forum of appeal. *Jag Lal* v *Har Narayan Singh*, 10 All 524. What *prima facie* determines the jurisdiction of a court is the claim, or the subject-matter of the claim, as estimated by the plaintiff and that determination having given the jurisdiction, the jurisdiction itself continues whatever the event of the suit. This includes *bona fide* mistakes by the plaintiff but the plaintiff cannot oust jurisdiction by making unwarrantable additions to the claim which cannot be sustained *Lakshman Bhatkar* v. *Babaji Bhatkar*, 8 Bom. 31.

Where the plaint is intentionally presented to a wrong court, the plaint is to be returned by court to the plaintiff to be presented to proper court and the suit should not be dismissed *Jhana* v. *Gopala*, 3 All. L. J 511: 26 All. W. N 195

One must look to the nature of the suit as brought and not to the nature of the defence to determine whether a court had jurisdiction. *Bapuji Raghunath* v. *Kauvaji Edulji Umrigar*, 15 Bom. 400.

Jurisdiction does not depend on the result of the suit or on the defence set up, but on the nature of the claim as brought. *Seth Harbax and another* v. *Lachman and others*, 1925 A. I. R. 183 (Nagpore)

Different Valuations.—The plaintiff is not entitled to put a higher valuation for the purpose of jurisdiction and a lower valuation for the purpose of court fees (where these should be the same). *Jogeshra* v. *Durga Prasad*, 36 All. 500; 12 A. L. J 844; 24 I. C. 670, see also *Balkrishna Narayan* v *Jankibai*, 44 Bom. 331: 22 Bom. L. R. 289: 51 I. C. 340 *Manni Lal* v. *Radhey Gopalji*, 23 A L. J. 344; 47 All. 501.

Appeal.—The value or subject-matter of the suit determines the forum of appeal This is the value assigned to the subject-matter of the suit by the plaintiff at the time of the institution of the suit and not the value as found by the court, unless it appears that true value has been mis-stated in the plaint either purposely or through gross negligence *Mahabir Singh* v *Behari Lal,* 13 All. 320.

Where the plaintiff *bona fide* valued the suit at Rs. 7,500 but the lower court found that the valuation is less than Rs 5,000 and the plaintiff contested that finding and preferred an appeal to the High Court. *Held,* that the value of the original suit in Act VII of 1887 did not mean the value as found by the court and the appeal was rightly preferred to the High Court. *Nilmoney Sing* v. *Jagabandhu Ray,* 23 Cal. 536.

The jurisdiction of the appeal court is not ousted because larger amount is awarded under the decree than the pecuniary jurisdiction of the court allows it to do. *Madho Das* v. *Ramji Patak,* 16 All 286, followed in *Jharia* v. *Gopala,* 3 All. L J. 511: 26 All. W. N. 195.

Power for Local Government to make rules determining value of land for jurisdictional purposes

3. (1) The Local Government may subject to the control of the Governor General in Council, make rules for determining the value of land for purposes of jurisdiction in the suits mentioned in the Court-fees Act, 1870, section 7, paragraphs v and vi, and paragraph x, clause *(d)*.

(2) The rules may determine the value of any class of land, or of any interest in land; in the whole or any part of a local area, and may prescribe different values for different places within the same local area.

NOTES.

Amendment.—The words "subject to the control" were substituted for the words "with the previous sanction" by the Devolution Act (XXXVIII of 1920).

"Under section 3 (1), Suits Valuation Act (Act VII of 1887), Local Governments are empowered to make rules for

determining the value of land for purposes of jurisdiction in suits mentioned in the Court Fees Act section 7 vi. and suits such as that before us are mentioned" *Narayan Nair* v. *Chena Kathiri Kutty*, 41 Mad 721 ; 34 M. L. J 397

The Punjab Government has made Rules under this Section *See* Punjab Government Notification No. 225 dated the 4th March, 1899 The Madras Government has framed rules under this section. Rules have also been framed in C. P. and Oudh

Valuation of relief in certain suits relating to land not to exceed the value of the land

4. Where a suit mentioned in the Court-fees Act, 1870, section 7, paragraph iv, or Schedule II, article 17, relates to land or an interest in land of which the value has been determined by rules under the last foregoing section, the amount at which for purposes of jurisdiction the relief sought in the suit is valued shall not exceed the value of the land or interest as determined by those rules.

NOTES.

Under section 4 of the Suits Valuation Act, the plaintiff is not entitled to put a higher value on the suit than what is covered by his interest in the litigation. *Narayan Singh* v. *Aiyasami Reddi*, 29 Mad 602 (603).

In valuing a suit for share of land, the rental of the share is to be the criterion of the stamp, *Ram Bilash* v *Ajoodyalal*, 2 W R Misc 45

Section 4 of the Suits Valuation Act indicates that the principle adopted by the legislature for valuing a suit mentioned in Schedule II Art 17 of the Court Fees Act which relates to land or an interest in land, is that the value of such a suit for the purposes of jurisdiction shall be governed by the value of land or interest in land. When such values are not determined by rules framed under section 3 of the Suits Valuation Act, the values then must be determined by judicial decision *Dayaram Jagjivandas* v. *Gobordhandas Dayaram*, 31 Bom 73. 8 Bom. L. R. 885.

Declaration.—In Punjab the proper valuation in a suit for declaration that certain property is the absolute property

of the plaintiff and is not liable to partition, is thirty times the annual *jama*. *Sohan Singh* v. *Devi Sing*, 46 Ind. Cas 490: 81 P. R 1918: 119 P. L. R. 1918: 115 P. W. R. 1918.

The valuation of a suit for declaration that mortgage in favour of the plaintiff is unaffected by attachment of mortgaged property in execution of decree against mortgagor, when there is no dispute as to the mortgage, is the amount for which execution is sought and not the value of the mortgaged property, *Madakuri Aukamma* v. *Mayyala Subbayya*, 54 Ind. Cas 543

Of a tenant at fixed rates.—The valuation of a suit, for the purposes of jurisdiction to eject a tenant at fixed rates, is the value of the right of the tenant in the land which it is sought to destroy but not the value of the land itself nor of nearly one year's rent, *Ram Raj Tewary* v. *Girnandan Bhagat*, 15 All. 63. 12 All. W. N. 240. But *see* section 7 paragraph xi. clause (*cc*) of the Court Fees Act.

Foreclosure.—The valuation for the purposes of jurisdiction is the value of the mortgagor's interest in the property which will be lost to him in case the mortgagee is successful, *Girdhari Lal* v. *Sheo Nanden*, 11 O. C. 154. But if the value of the mortgaged property be greater than or equal to the amount of the charge, then the value of the suit is the total sum due under the deed, *i.e.*, both principal and interest due under the mortgage. *Kothiram* v. *Ganpati*, 8 N. L R. 179: 17 Ind. Cas. 886. *Nana* v. *Mulchand*, 9 N. L. R. 161

Where the purchaser of mortgaged property being defendant in the mortgagee's suit for foreclosure, preferred an appeal against the decree for foreclosure made in the suit, the amount found due on the mortgage being over a lakh of rupees, *held* (for the purposes of ascertaining the court fee payable on the memo. of appeal) the value of the property affected by the decree must be taken to be Rs 2,500 being the amount for which the appellant has purchased the property. *Jagatdhar Narain Persad* v. *Brown*, 33 Cal 1133 · 10 C W. N. 1010. 4 C L J. 121.

Landlord and Tenant.—*Suit by tenant*.—The value of a suit brought by an occupancy raiyat of certain lands for a declaration that the landlords are not entitled to recover from them by way of rent more than 1/16th share of the produce, is, for the purposes of jurisdiction 15 times the land revenues under rules framed under section 3 of the Suits Valuation Act. *Jamal* v. *Quadir Baksh*, 54 P. R. 1914: 238 P. L. R. 1914: 153 P W. R. 1914: 25 Ind. Cas. 437.

Mortgage.—The valuation of a suit for the purposes of

jurisdiction, to declare that the mortgage is subsisting, after disallowance of his claim to mortgaged property which was attached in execution of another decree, need not be on the amount of attachment *Fisher* v *Arunachella Chettiar*, 19 M. L. J. 226 · 5 M L T 70 2 Ind Cas 522

Where the suit is to declare that a mortgage by coparceners is null and void on the ground that the same was executed without consideration and *ultra vires* as the mortgagor had no right to mortgage the plaintiff's share, the valuation for purpose of jurisdiction will be on the basis of mortgagee's rights and not on the value of the property itself. *Paire Lal* v *Ram Chand and Jagannath*, 112 P W R 1911 ; 11 Ind. Cas. 443

Redemption.—In a redemption suit the value of the subject-matter is not the market value of the property but the amount of *mortgage*-money, which amount, therefore, determines the jurisdiction of the trial court and determines the forum of appeal Section 8 of the Suits Valuation Act does not affect the law laid in 5 All. 332 and 8 All. 438. *Kedar Singh* v. *Matabadal Singh*, 31 All 44 · 5 All L. J. 713 : (1903) 23 All. W. N. 296 . 1 Ind Cas. 703. *Mohan Lal* v. *Mohan Lal and others*, 1926 A. I R. 346 (Oudh).

In a suit for redemption of a mortgage instituted in the Subordinate Judge's Court, the amount of the principal of the debt was Rs 3,899 and odd. The plaintiff paid the court fees on that amount but the Subordinate Judge erroneously ordered the plaintiff to pay court fees on the total amount payable on redemption, *viz*, Rs 7,218 odd, and the plaintiff paid the deficit court fee The Subordinate Judge passed a decree in the suit in favour of the plaintiff The defendants preferred an appeal to the High Court The respondent objected that the appeal did not lie to the High Court but to the District Court *Held*, that the amount of the principal debt must be taken as determining the jurisdiction under Civil Courts Act, and consequently that the suit lay in the Subordinate Judge's Court and that the appeal lay to the District Court and not to the High Court. The authority of the Full Bench Decision in *Zamorin of Calicut* v. *Narayan*, 5 Mad. 284, is unaffected by the Suits Valuation Act. The order of the Subordinate Judge erroneously levying court fees on the total amount payable on redemption cannot deprive the District Court of jurisdiction to hear the appeal and confer it on the High Court *Jallaldeen Marakayan* v. *Vijayaswami*, 39 Mad. 447 ; *Basudeva* v *Madhava*, 16 Mad. 326 followed

Suits for redemption are not covered by Section 8 of the Suits Valuation Act The Valuation in such suits depend not

on the amount secured but on the amount ultimately found to be due. *Sarada Sundari* v. *Akramunnessa*, 51 Cal. 737; 28 C. W. N. 710; 78 I. C. 747; 1924 A. I. R. 783 (Cal.),

Redemption and claim of rent.—When there are two distinct causes of action, namely, the claim for redemption and that for the arrears of rent, the value of the subject matter of suit is the aggregate value of the two heads of relief. *Konna Panikor* v. *Karunakara*, 16 Mad. 328.

Improvements.—The value of improvements is not to be considered in calculating the value of the "subject of suit" in a suit to redeem a Kanam and a purankandam (further advance) when the instrument of mortgage does not expressly secure the amount to be allowed for improvements in redemption, *Zamorin of Calicut* v. *Suryanarayan Bhatta*, 5 Mad. 284.

Partition. —*Allahabad High Court.*—In a suit for partition of the share of one only out of several co-sharers in immovable property, the proper valuation of the suit for the purpose of jurisdiction is the value of the share sought to be separated from the rest of the property, and not the value of the entire property out of which the share is to be taken. *Wajib-ud-din* v *Waliullah*, 24 All. 381.

Bombay High Court.—A suit for partition and separate possession of joint family property consisting of land, houses and movable property, falls within section 7 paragraph v. of the Court Fees Act and therefore section 3 of the Suits Valuation Act is not applicable. The market valuation determines the jurisdiction of the trial court. *Dagdu Sakharam* v. *Totaram Narayan*, 23 Bom. 658: 11 Bom. L. R. 1074. See also *John Joseph De Silva* v. *J. J. De Silva*, 6 Bom. L. R. 403

Calcutta High Court.—The valuation of suit for partition by a joint owner, is the value of the entire property sought to be partitioned and not on the value of the share of the plaintiff. Therefore, if the value of plaintiff's share is below Rs. 5,000 and the value of the entire property above Rs. 5,000, an appeal lies to the High Court direct from the decree of the Subordinate Judge *Biraj Mohini Dasi* v. *Chintamoni Dasi*, 3 C. L. J. 197: 10 C W N 565.

But if the suit had been erroneously valued in the court of first instance on the valuation of the share of the plaintiff, then section 11 of the Suits Valuation Act is applicable and the appellate court would not interfere unless such valuation has materially prejudiced the disposal of the suit. *Edward Dalglish* v *Ramdhari Sahu*, 4 C. L. J. 500.

In a suit for partition it is the value of the entire property

which determines jurisdiction and not of the share which the plaintiff claims in the property *Rajani Kanta Bag* v. *Rajabala Dasi*, 29 C. W. N. 76.

See also *Lala Bhugwat Sahay* v *Rai Pashupati Nath Bose and others*, 10 C. W N. 564, and *Baidya Nath Adya* v. *Makhan Lal Adya*, 17 Cal 680, *Onooroop Chandra Mukerjee* v. *Pertab Chander Pal*, 6 W. R Mist R. 40. *Musst Ameena Khatoon* v. *Radhabenod Misser*, 7 M I A 162

Madras High Court.—The Madras High Court took the view that the value for the purpose of jurisdiction is the amount at which the plaintiff valued his share See *Velu Gounden* v. *Kumaravelu*, 20 Mad. 289 *Baganandan Rangia* v. *Baganandan Subramania Chetty*, 9 M L T. 3 21 M. L J. 21. 8 Ind Cas 512: (1910) M. W. N 755 F. B *Gill* v. *Varadaragharayya*, 43 Mad 396; 38 M L. J 92; 1920 M W. N. 124; 27 M. L T. 146, 55 I B. 517.

Re-partition.—The correct method of regarding the relief claimed in suits for partition of a joint family which has already been divided, is, that it is merely a prayer to change the form of enjoyment and can only be valued by deducting from the value of plaintiff's share as ascertained in the partition the value of the beneficial enjoyment as a coparcener before partition. In such a case, therefore, it is impossible to estimate the money-value of the suit to which Art. 17B alone should be held to be applicable *Prathipati Suryanarayana* v *Prathipati Seshayya and others*, 1926 A. I R 122 (Mad.).

Patna High Court.—The Patna High Court *held* that the value of the suit was that of the share claimed by the plaintiff where the suit is one for declarations with consequential relief. *Dukhi Singh* v *Harihar Shah*, 1921 Pat. C. W. N. 89 (92): 1 Pat. L T 595 5 Pat. L J. 540 58 Ind. Cas 236, but the value is to be the value of the entire property where the plaintiff is in possession and there is no dispute as to title *Ranjit* v. *Md. Quassim*, 72 I. C. 916; 1923 A. I. R. 342 (P.).

Pre-emption.—In the Punjab the value of the pre-emption suit for the purpose of jurisdiction is 30 times the proportionate amount of revenue recorded as payable for the holding in which the land in suit is comprised even though it be a specified plot by metes and bounds and not a definite share of the holding *Sheikh Arshad Ali* v. *Zorawar Singh*, 92 I. C. 986

Possession.—The valuation for the purposes of jurisdiction of a suit for recovery of possession of land, not separately assessed with revenue and not a definite part or share of a revenue paying estate, must be made according to the market-value of the land.. *Gadavarty Sundoramman* v. *Gadavar Mangamma*, 34 M. L. J. 558.

Possession and mesne profits.—For valuation of suit for possession and mesne profits claimed see *Mohini Mohan Das* v. *Satis Chandra Ray*, 17 Cal. 704.

Occupancy raiyat.—The value of the suit is the value of the subject-matter in controversy, *i.e.*, the interests claimed by the plaintiff *Upendra Chandra Mitra* v. *Satcowrie Dhar*, 13 Ind. Cas. 964.

Possession of a house.—The value of a suit for possession of a house is the market value of the house as ascertained by the court and not the value as stated by the plaintiff in the plaint. *Sundar Das* v. *Mussa. Umda Jan*, 82 I. C. 614.

The valuation of a suit for possession of a house by ejecting the defendant is to be determined not upon the allegations as made in the written statement but upon allegations made in plaint. *Musst. Barkatunnissa* v. *Musst. Kaniz Fatima*, I. L. R. 5 Patna 631.

Possession of land.— ... of a suit for possession after a d... sale is not to be calculated ... section 7 paragraph 9 of the ... v. *Shama Churan Bose*, 1 C. L. R. 473; *Jeebraj Singh* v. *Inderjeet Mahton*, 18 W. R. 109; *Nouhoon Singh* v. *Toofanee Singh*, 20 W. R. 23: 12 B. L. R. 113; *Chunder Nath Bhattacharjee* v. *Brindabun Shaha*, 25 W. R. 39.

Reversionary right.—The valuation of such contingent interest, not being one for possession or for present interests, is the valuation made in the plaint. *Haidarkhan* v. *Ali Akbar*, 18 P. R 1897.

Making and enforcement of rules.

5. (1) The Local Government shall before making rules under section 3, consult the High Court with respect thereto.

(2) A rule under that section shall not take effect till the expiration of one month after the rule has been published in the local official Gazette

Repeal of section 11 of the Madras Civil Courts Act, 1873

6. On and from the date on which rules under section 3 take effect in any part of the territories under the administration of the Governor of Fort Saint

George in Council to which the Madras Civil Courts Act, 1873, extends, section 14 of that Act shall be repealed as regards that part of those territories.

NOTES.

Section 14 of the Madras Civil Courts Act (Act III of 1873) is as follows:—

"When the subject matter of any suit or proceeding is land, a house or garden, its value shall, for the purposes of the jurisdiction conferred by this Act, be fixed in manner provided by the Court Fees Act 1870, section 7 clause 5."

In suits falling under section 7 paragraph xi of the Court Fees Act, the valuation for the purpose of jurisdiction and court fees is the same. There is nothing to indicate that section 8 of the Suits Valuation Act should be read subject to the provisions of Section 14 of the Madras Civil Courts Act. *Vannavalli Seshagiri Row* v. *Narayanswami Naidu*, 26 M. L. J. 573: 24 Ind. Cas. 374.

and simply a mode of proving them, and the value of the transaction must therefore be taken to be the value of the suit."

Suits to establish validity of charge upon property is to be valued upon the value of the property or amount of the charge whichever is less *Krishnama Chariar* v. *Srinivasa Ayyangar*, 4 Mad. 339.

Partition suits.—The value of the property in which plaintiff claims share and not the value of the plaintiff's share determines jurisdiction. *Vydinatha* v. *Subramanya*, 8 Mad. 235; but section 3 of the Suits Valuation Act has altered that law. *Velu Gounden* v. *Kumara Velu*, 29 Mad. 289. *See* also *Krishna Sami* v. *Kanakasabai*, 14 Mad. 183: 1 M. L. J. 234; *Chakrapani Asari* v. *Narasinga Rau*, 10 Mad. 56.

Pre-emption.—A suit to enforce right of pre-emption is a suit whose subject matter includes such rights relating to land as a right to pre-empt within the meaning of section 6 of the Suits Valuation Act and its proper valuation for the purpose of jurisdiction is, in accordance with section 14 of the Madras Civil Courts Act, that fixed in the manner provided by the Court

Act section 7 paragraph vi. *Narayan Nair* v. *Cheria Kattri Kutty*, 41 Mad. 721 : 34 M. L. J. 397.

PART II.

OTHER SUITS.

Extent and commencement of Part II

7. This Part extends to the whole of British India, and shall come into force on the first day of July, 1887.

Court Fee value and jurisdictional value to be the same in certain suits.

8. Where in suits other than those referred to in the Court-fees Act, 1870, section 7, paragraphs v, vi and ix, and paragraph x, clause *(d)*, court-fees are payable *ad valorem* under the Court-fees Act, 1870, the value as determinable for the computation of court-fees and the value for purposes of jurisdiction shall be the same.

NOTES.

Application.—The provisions of Section 8 of the Court Fees Act (Act VII of 1870) shall apply to appellate courts as well as to the courts of lower denominations, and the value of the subject-matter of suits for the purposes of jurisdiction must be determined by the provisions of that Section.

Thus where the plaintiff valued the suit for the purposes of court fees at a figure below Rs 1,000, but valued it for the purposes of jurisdiction at Rs. 14,000, *held* that the appeal lay to the District Court and not to the High Court, *Bai Barunda Lakshmi* v *Bai Manegavri*, 18 Bom. 207.

Construction.—The right construction of section 8 of the Suits Valuation Act is that the valuation for the purpose of jurisdiction should, in the cases mentioned here, follow and be the same as the valuation for the purpose of court fees. *Sailendra Nath Mitra* v. *Ram Chandra Pal*, 34 C. L. J. 94 : 25 C. W. N. 768 : 66 Ind. Case. 268.

The words "as determinable" in this section means as determinable by the court which has to try the case. *Dayaram Jagjivan* v. *Gobordhandas Dayaram*, 31 Bom. 93 : 8 Bom. L. R. 885.

Account suits.—Such suits fall under section 7 iv. (b) of the Court Fees Act and the valuation for jurisdiction and court fees are to be identical under Order 7, Rule 2 C P C. and an approximate value of the amount claimed is to be given and court fees to be paid on that value This valuation determines the forum of appeal *Ijjatulla Bhuiya* v. *Chandramohan*, F. B. 34 Cal 954 11 C W N 1133, 6 C L J. 225 ; and the amount then finally investigated and additional court fees to be given under section 11 of the Court Fees Act. *See* cases noted under that section *Bai Varunda Lukshmi* v. *Bai Manegavri*, 10 Bom. 207 *Bai Amba* v *Pranjivandas*, 19 Bom. 198. *Bhagvantrai* v *Mehta Bajirao*, 18 Bom 40.

Administration suits are suits for accounts and consequently the plaintiff need only make an approximate valuation. *Sashibhusan Bose* v *Manindra Chandra Nandy*, 44 Cal. 390 : 21 C W N 310 24 C. L J 448, *Khatija* v. *Sheikh Adam*, 39 Bom 545 17 Bom L R. 574 : 29 I C 949.

Adoption.—In a suit to set aside an adoption, the valuation by the plaintiff of the relief claimed determines the forum of the court *Prohlad Chandra Das* v *Dwarka Nath Ghose*, 37 Cal 860, 14 C W N 929 6 Ind Cas 636 The valuation for jurisdiction is (a) according to *Madras High Court*, the value of the property at stake *Keshava* v *Lakshmi Narayan*, 6 Mad 192, (b) according to *Allahabad High Court*, according to the valuation put by the plaintiff *Sheodheni* v. *Tulshi Ram*, 15 All 378 ; (1893) All W. N. 147. The Bombay High Court has followed the Allahabad High Court, *Bai Machhbai* v. *Bai Hirabai*, 35 Bom 264 ; 13 Bom. L. R. 251 ; 10 Ind. Cas. 816.

Attachment.—A suit for declaration that the property is not liable to attachment and sale in execution of a decree, is to be valued at the amount for which the decree is to be executed when the value of the property exceeds the value of the decree. *Anandi Kunwar* v. *Ram Nirayan Das*, 40 All. 505.

Award.—A suit to set aside an award is to be valued at the actual value of the subject matter of the suit and an arbitrary value should not be given *Venkata Challam Pillai* v. P. U. *Srinivasa Aiyar*, 75 Ind. Cas. 115 ; (1924) All. I. R. 84 (Madras).

Cancellation—Bond.—Suits based on a bond whether registered or unregistered are suits for money and the valuation for the purposes of jurisdiction and court fees are the same

as these suits fall under section 7 paragraph 1. *i.e.*, on the amount in claim.

Of a bond.—The valuation of suits for cancellation of a bond which is admitted by the plaintiff to be for a portion of the consideration under a mistaken belief that the bond was for the amount admitted in plaint, is to be valued at the difference in the amount admitted and the amount stated in the bond *Kali Charan Rai* v. *Ajudia Rai*, 2 All. 148; *Narain Putter* v *Aja Putter*, 7 Mad. H. C. 372; and the valuation must be with reference to principal amount and not the principal amount plus interests, *Gulab Rai* v. *Mangli Lal*, 6 All. 71.

All cancellation of documents fall under section 7 iv. (c) of the Court Fees Act, hence the valuation for the purposes of court fees and for the purpose of jurisdiction are the same.

The plaintiff in a suit for cancellation of a deed of sale and setting aside a sale and for possession, can put his own valuation. *Param and others* v. *Achal*, 4 All. 289.

Conjugal rights.—In suits for restitution of conjugal rights the valuation is the valuation of the plaintiff. *Jan Mohammed Mandal* v. *Masher Bibee*, 34 Cal. 352: 5 C. L. J. 400: 11 C. W. N 458, *Zaer Hussain Khan* v. *Khurshed Jan*, 28 All. 545: 3 All L. J. 266. 1906 26 All W. N. 99.

The valuation in the plaint is to be accepted unless made with an improper motive, or deliberately for the purpose of giving the court jurisdiction which it otherwise would not have. *Jasoda Chhotu* v *Chhotu Mannu*, 11 Bom. L. R. 1352: 4 Ind. Cas. 836.

Customary right.—A suit for division and re-distribution of village lands according to custom, need only be valued according to the share of the plaintiff *Venkataswami* v *Subba Rau*, 2 Mad. H. C R. 1.

Damages.—The valuation of suits for damages claimed, for the purposes of jurisdiction must be according to amount claimed and not the amount which might eventually be found due. *Joy Doorga Dossee* v. *Manick Chand Doboo*, 16 W. R. 248.

Declaration.—*To set aside decrees.*—The valuation of a suit for the purposes of jurisdiction to set aside a decree, obtained against the interest of the plaintiff, should ordinarily be valued at the amount of the decree. *Umatul Batul* v. *Nauji Koer*, 11 C. W. N. 105: 6 C. L. J. 427. *Thakur Prosad* v. *Punkhal Singh*, 8 C. L. J. 485. But where the amount decreed and the value of the property in dispute are not identical, then the lower of the two values is the value of the suit. The Judicial Committee of the Privy Council said "The value of the action means the value to the plaintiff. But the value of

the property might well be Rs 1,000 while the execution debt Rs 10,000. It is only when the execution debt is less than the value of the property that its amount affects the value of the suit," *Bibi Phul Kumari* v. *Ghanshyam Misser*, 35 Cal. 202: 12 C. W N 169: 7 C L. J 36 P. C.

Suits for simple declaration.—The value of a suit for declaration is the value of the property in respect of which the declaration is asked for *Mohini Mohan Misser* v. *Gour Chandra Rai*, 5 Pat L J 397; 1 P L. T. 390; 56 Ind. Cas 762 *but see Ganapati* v *Chattu*, 12 Mad. 223 where it was held that the value would be as if the suit was one for possession.

Declaration of title to land.—The valuation of suits for the purposes of jurisdiction to declare title to four paid offices in a temple, should be the value of all the four offices. *Sundara* v *Subha*, 10 Mad. 371.

With Consequential relief.—The value put by the plaintiff is to be taken as the proper value unless it appears that value so put was arbitrary and is inconsistent with the value of the relief sought and circumstances which subsequently influence the judgment of the court are not to be looked at. *Rajabala Dassi* v *Radhika Charan Ray*, 40 C. L. J. 150; 29 C. W. N. 76.

Doorway.—The valuation for the purposes of jurisdiction of a suit to close a doorway is to be calculated upon the selling price of the house before and after the door was opened. *Mula Mal* v *Gurdial*, 5 P. R 1887.

Injunction.—*Declaration and injunction*.—The court must accept the value of the relief as stated in the plaint for the purpose both of the court fees and jurisdiction. *Vacchani Keshalbai Balibhai* v *Vacchani Naubha Bawaji*, 33 Bom. 307; 11 Bom. L R. 90 4 Ind. Cas. 108; *Hari Sunker Dutt* v. *Kali Kumar Patra*, 32 Cal 734: 9 C W. N. 690; except where under section 3 of the Suits Valuation Act the value is determined by the rules framed under the section. *Barru* v. *Lachhman*, 103 P. R. 1913: 23 P. L R. 1913: 228 P. W. R. 1913 22 Ind Cas 503 But the value must be reasonable value *Umatul Botul* v. *Nouji Koer*, 11 C. W. N. 705: 6 C L J 427.

The plaintiff valued his suit for injunction at Rs 110 for the purpose of court fees and at Rs. 4,000 for the purpose of jurisdiction and paid court fees on Rs. 110 only. The suit was dismissed and pleader's fees were assessed on Rs. 4,000; held, by the Punjab High Court that the valuation for the purpose of jurisdiction and for court fees being the same the court below should have asked the plaintiff to re-state the value and awarded pleader's fees accordingly. *Amir Chand* v. *Hakim Ali*, 69 Ind. Cas 577; 1924 A. I. R. 364 (Lahore.)

In a suit for injunction it is unnecessary for the plaintiff to fix any value for purposes of jurisdiction, as under section 8 of the Suits Valuation Act the valuation for the purpose of court fees and valuation for the purpose of jurisdiction are identical *Govinsa Krishna Sathe* v. *Hanmaya Lingaya Fulmali*, 45 Bom. 567 22 Bom. L. R. 1450: 63 Ind. Cas. 777. *Janki Sahay* v. *Lal Behari Lal*, 1926 Pat. C. W. N. 102; 1926 A. I. R. 334 (Patna). *Bachhan* v. *The Municipal Board of Mirzapore*, 44 I C 951; 23 A L. J. 578; 48 All. 412; 1926 A. I. R. 423 (Allahabad)

Kobalas.—Declaration of title to land on setting aside kobalas.—The valuation for the purposes of jurisdiction of suits to declare title of the plaintiff to lands on setting aside certain *kobalas* illegally executed by the father of the plaintiff need not be valued at the total value of the kobalas. *Sheogolam Singh* v *Bejoyram Protab Singh*, W. R. S. N. 317.

The valuation for the purpose of jurisdiction of a suit to set aside a kobala by which the estate was illegally alienated, *need not be according to value stated in the kobala. Angopura Chowdhury* v. *Meah Bibee*, 10 W. R. 207.

Landlord and tenant.—In a suit to obtain lease on declaration of mourasi and mokarari title to the land at an annual rental of Rs. 71, it was held that suit falls under section 7 paragraph x (c) of the Court Fees Act and under section 8 of the Suits Valuation Act and the suit should be valued at Rs 71 for the purposes of jurisdiction and court fees and the suit ought to be filed in Munsiffs Court. *Port Canning and Land Improvement Co. Ld.* v. *Rosonali*, 17 C. W. N. 160: 15 Ind Cas 46.

Under section 7 paragraph xi. (cc) of the Court Fees Act a suit by the landlord against a tenant including holding over is to be valued according to the amount of rent payable for the year next before the year of suit. The valuation for court fees will be the value for jurisdiction under section 8 of the Suits Valuation Act. *Ram Chand* v. *Ram Sukh Das*, 27 P. R. 1910: 30 P W. R. 1910: 5 *Ind. Cas.* 910.

Partition.—The plaintiff, in a suit for partition alleging that he is in joint possession with the defendant of the properties as section 8 of the Suits Valuation Act applies to such suits for partition as are not also suits for possession. *Chelaswamy Ramiah* v. *Chalaswamy Ramasamy*, 1912 Mad W. N. 199: 13 Ind. Cas. 903. But see *Beni Madhab* v. *Gobind Chandra*, 22 C. W. N. 669.

Partnership.—In a suit by different partners for specific sums of money on adjustment of accounts or in the alternative for such other amounts as may be found due on adjustment of

accounts after dissolution of partnership, the court fee is payable *ad valorem* under section 7 para. iv. (b) of the Court Fees Act and the value for the purposes of jurisdiction under section 8 of the Suits Valuation Act is the same as that for the computation of court fees, *i.e.*, the amount at which the relief sought is valued *Dhani Ram Saha* v. *Bhagirath Saha*, 22 Cal 692 (708); *Ladubhai* v. *Revichand*, 6 Bom. 143.

Registration of documents—Suits to enforce.—In such suits the valuation would be according to the valuation made by the plaintiff The court fee payable is Rs 10 only, but if there be a further question whether the plaintiff was a minor when he executed the deed, court fees payable are *ad valorem* and the valuation would be the same for court fees and for jurisdiction

The above was the opinion of the author expressed in previous editions of this book The Calcutta High Court in *Golam Rahaman Mondal* v *Sm. Sabekjan Bibi*, 30 C. W. N. 951 held that the plaintiff in a suit under section 77 of the Indian Registration Act for the registration of a conveyance, is entitled to put his own valuation on the suit as the first is not with regard to any land or interest in land to be conveyed by the document

The Madras High Court held that the valuation is to be made at the value of the land expressed in the instalment. *Ramakrishnamma* v *Bhagamma*, 15 Mad 56; *Ramu Aiyar* v. *Sankara Aiyar*, 31 Mad 89.

Religious worship.—In a suit to obtain an injunction that the defendants should not restrain the plaintiffs from saying prayers in a certain mosque and setting up their own Imam to lead the prayers of their congregation and from performing other rituals connected with the Divine service, *held*, that the value for the purposes of court fees is the value for the purposes of jurisdiction *Umar Din* v *Abdulla*, 43 P L. R. 1903.

Rent and injunction.—Where the plaintiff brought a suit for recovery of arrears of rent and injunction on certain other persons from disputing his title as landlord, the suit is based upon two causes of action and falls under para. (i) and para. iv. of section 7 of the Court Fees Act. Therefore the valuation for the purpose of court fees and valuation for jurisdiction is the same under section 8 of the Suits Valuation Act. *Parumal* v. *Motumal*, 6 Sind L. R. 115: 17 Ind. Cas. 44.

Specific performance.—In suits for specific performance the method of valuation for the purpose of jurisdiction is first to value the suit for the purpose of court fees under section 7 para. v. (c) of the Court Fees Act and then to adopt that

valuation as valuation *for the purpose of jurisdiction. Sailendra Nath Mitra* v. *Ram Chand Pal*, 34 C. L. J. 94: 25 C. W. N. 768: 66 Ind. Cas. 268.

Tarwad, membership of.—The value of a suit for a declaration that certain persons are or are not members of a tarwad is the value of the share of the tarwad property which would be allotted to them if a partition were made by common consent *Panga* v *Unnikutti*, 24 Mad. 275.

Set-off—There is an important difference between the method of valuation for the purpose of jurisdiction permissible in the case of a claim for a money-decree made in a plaint and the method of valuation for purposes of jurisdiction permissible in the case of a set-off pleaded by a defendant in his written statement.

Section 8 of the Suits Valuation Act, 1887, is ordinarily the provision regulating the valuation of a plaint in a suit for the purpose of jurisdiction; and when that provision is read with the provisions of the Court Fees Act, 1870, the valuation of a plaint in which a money decree is claimed is based on the actual sum claimed after allowing for deductions, such as expressed. Set-off in the plaint...... The provisions of the Court Fees Act applies to the case of a set-off. *D. S. Abraham & Co.* v. *Ebrahim Gorabhay*, 1925 A. I. R. 65 (Rangoon).

Determination of value of certain suits by High Court

9. When the subject-matter of suits of any class other than suits mentioned in the Court-fees Act, 1870, section 7, paragraphs v and vi, and paragraph x, clause (*d*), is such that in the opinion of the High Court it does not admit of being satisfactorily valued, the High Court may, with the previous sanction of the Local Government, direct that suits of that class shall, for the purposes of the Court-fees Act, 1870, and of this Act and any other enactment for the time being in force, be treated as if their subject-matter were of such value as the High Court thinks fit to specify in this behalf.

NOTES.

Rules have been framed in accordance with this section by the High Court of Madras, the Chief Court (at present a High

Court) of Punjab and the Judicial Commissioners of Central Provinces and Oudh.

The Madras High Court Rules are dated 26th February 1903 and are published in the "Fort St. George Gazette." dated 3rd March, 1903, Part II p. 368.

For the Punjab Chief Court Rules, *see* rules and orders under the Special Act Vol III p. 90 No. 14 According to these Rules suits for restitution of conjugal rights are to be valued at Rs. 1,000. *Nathu* v *Chuhri*, 20 P. L. R 1919: 52 I. C. 101.

For the Oudh Rules, *see* Notification No. 779, dated the 18th June 1889, by the J C of Oudh and Notification No 2464, dated the 21st December 1896 N W. P. and Oudh Gazette, dated the 4th January 1899, Part II p. 2, etc.

For the Central Provinces Rules, *see* Notification No 3240 dated 28th June, 1888, C. P Gazette, Pt. II. p. 140

Effect of the Rules.—It is not within the jurisdiction of the Law Courts to consider as to whether in case of particular class of suits the High Court and the Local Government exercised their discretion wisely in raising the fixed court fees by framing the rules under section 9 of the Suits Valuation Act and whether or not in a suit of the present class a court fee *ad valorem* on the property is a reasonable fee The rules as they stand have the force of law The C. P Gazette Notification, dated 8th September, 1911 as reproduced in Judicial Commissioner's Civil Circular II, was published with the intention of effecting this result

This was a suit for declaration that the plaintiff was the adopted son of one B The Judicial Commissioner said at p 66 "It appears to me that the court fee of Rs 10 fixed for suits falling under Article 17 was an arbitrary fee fixed for convenience and that section 9 of the Suits Valuation Act enacted that this fee, fixed on an arbitrary valuation, should be regarded as provisional, and liable to be supplanted, in the case of selected class of suits by a court fee based on what the High Court and the Local Government considered to be reasonable basis of valuation " *Ganpatrao* v *Laxmi Bai*, 43 Ind Cas 64 · 15 N L R 24

"Section 9 provides *inter alia* that it is competent to the High Court with the previous sanction of the Local Government to frame rules for the valuation of suits referred to in paragraph iv of section 7 of the Court Fees Act and for determining the jurisdiction of courts, but no such rules have been framed applicable to cancellation and delivery up of an instrument in writing Until such a rule is framed the valuation given in the

plaint by the plaintiff cannot be revised." *Chinammal* v. *Madarsa Rowther*, 27 Mad. 480.

Application.—Declaratory suits —Rule 2 of the Rules of the Madras High Court dated 26th February, 1908, does not apply to the case of a declaratory suit where no consequential relief is prayed as the value for the purpose of jurisdiction is the value of the property likely to be affected by the declaration *C. V. Sankaran Nair* v. *C. V. Gopala Menon*, 30 Mad. 18.

Where rules have not been framed the Court Fees Act would apply and the fees payable are those prescribed in the first and second Schedules to the Act. *W. M. Varadaraja Mudaliar* v *M. Arunimgam Pillai*, 1925 A. I. R. 1216 (Mad.).

Restitution of conjugal rights.—Under section 8 of the Suits Valuation Act (Act VII of 1887) it appears to be open to the High Court in a case of this description to direct, with the previous sanction of the Local Government, that the subject matter is to be valued in a specified manner. *Aklemunnessa Bibee* v *Mahomed Hatim*, 31 Cal 849: 8 C. W. N. 705 (709).

But the Punjab Chief Court framed Rules under this section and the valuation must be made under the Rules, and any prayer which is ancillary to the main prayers need not be valued *Nathu* v. *Msst Chuhri*, 20 P. L. R. 1919: 52 I C. 1010.

10. *[Repeal of s. 32, Punjab Courts Act, 1884 (XVIII of 1884).] Rep. by the Repealing and Amending Act, 1891 (XII of 1891).*

PART III.

SUPPLEMENTAL PROVISIONS.

Procedure where objection is taken on appeal or revision that a suit or appeal was not properly valued for jurisdictional purposes.

11. (1) Notwithstanding anything in section 578 of the Code of Civil Procedure, an objection that by reason of the over-valuation or under-valuation of a suit or appeal a Court of first instance or lower appellate Court which had not jurisdic-

tion with respect to the suit or appeal exercised jurisdiction with respect thereto shall not be entertained by an appellate Court unless—

(*a*) the objection was taken in the Court of first instance at or before the hearing at which issues were first framed and recorded or in the lower appellate Court in the memorandum of appeal to that Court, or

(*b*) the appellate court is satisfied, for reasons to be recorded by it in writing, that the suit or appeal was over-valued or under-valued, and that the over-valuation or under-valuation thereof has prejudicially affected the disposal of the suit or appeal on its merits.

(2) If the objection was taken in the manner mentioned in clause (*a*) of sub-section (1), but the appellate Court is not satisfied as to both the matters mentioned in clause (*b*) of that sub-section and has before it the materials necessary for the determination of the other grounds of appeals to itself, it shall dispose of the appeal as if there had been no defect of jurisdiction in the Court of first instance or lower appellate court.

(3) If the objection was taken in that manner and the appellate court is satisfied as to both those matters and has not those materials before it, it shall proceed to deal with the appeal under the rules applicable to the Court with respect to the hearing of appeals; but if it remands the suit or appeal, or frames and refers issues for trial, or requires additional evidence to be taken, it shall

direct its order to a Court competent to entertain the suit or appeal.

(4) The provisions of this section with respect to an appellate Court shall, so far as they can be made applicable, apply to a Court exercising revisional jurisdiction under section 622 of the Code of Civil Procedure or other enactment for the time being in force.

(5) This section extends to the whole of *British India, and shall come into force on the first* day of July, 1887.

NOTES.

The plaintiff must under Order 7 Rule 1 C P. C., state the value of the suit so far as the suit admits of being valued. It was not intended by legislature that the valuation of a suit should be arbitrary or reckless, or that the plaintiff should be at liberty to choose the court in which to file the suit.

Where a defendant objects to the valuation, such objection can be heard even at the hearing of the appeal if such an objection was taken in the court of first instance at or before the first hearing. *Kamta Siroman Prosad Singh* v *Gayadin*, 25 O. C 184 ; 69 Ind. Cas. 201.

Application.—This Section does not apply where the valuation is fixed by Rules having the force of law and is not discretionary *Khuda Yar* v. *Wahab Din*, 47 P. L R. 1901 : 35 P R. 1901 ; *Sanga* v. *Mali*, 214 P. R 1910.

This Section is applicable whether the under-valuation or over-valuation is due to a mistake in estimating the value of the subject-matter or due to a mistake in principle. *Krishnasami* v *Kanakasabai*, 14 Mad. 183 · 1 M. L. J. 234.

Section 11 of the Suits Valuation Act applies only to those cases where the valuation of suit is in the discretion of the parties at court and not to those cases where the valuation is fixed by the rules, and in the latter class of cases section 11 of the Suits Valuation Act does not cure the defect of over-valuation and under-valuation and the disposal of suit by a wrong court is without jurisdiction. *Mahomed Shah* v. *Abdulla Shah*, 56 Ind. Cas. 918.

Effect of the section.—The effect of this Section is simply to treat the over-valuation or under-valuation as a mere irregularity contemplated under section 578 (section 99 of the present code) of the Code of Civil Procedure. The objection should be taken at the earliest opportunity. *Raghavachariar* v. *Raghavachariar*, 20 M. L. J. 726.

Section 11 of the Suits Valuation Act has the effect of curing a want of jurisdiction caused by improper valuation not only in cases when there has been a final disposal by the lower appellate court, but also when there has been a remand to the original court for a finding *Raman* v. *Secretary of State for India in Council*, 24 Mad 427 11 M L J. 215.

Where the suit was instituted in a wrong court due to erroneous valuation, section 11 of the Suits Valuation Act gives the plaintiff adequate protection *Sailendra Nath Mitra* v. *Ram Chandra*, 34 C. L J 94 25 C. W N. 768: 66 Ind Cas. 268. See also *Balkrishna Narayan* v *Jankibai*, 33 Bom. 331 22 Bom. L R 289. 51 I. C. 340

Section 11 of the Suits Valuation Act governs all cases of erroneous valuation irrespective of the question whether the valuation is determined by rules having the force of law or in any other manner (132 P R 1894 and 35 P R 1901; 4 P. L. R 1901 overruled). *Sardar Khan* v *Mt Aisha Bibi*, 1925 A. I. R. 290 (L); I. L. R 6 Lahore 105.

Prejudicially affected—The appeal court cannot interfere unless it is shown that the under valuation has prejudically affected the disposal of the case *Dinesh Chandra* v. *Sarnamoyi Debi*, 1 C. W. N 136 *Bishnu* v *Dal Singh*, 71 P L R 1906; 55 P R 1906

Where a court of inferior jurisdiction disposes of an appeal which should have been heard by a superior tribunal, there is ground for thinking that the parties are prejudically affected. *Cheloo* v *Kalidas*, 21 P R 1918 44 Ind Cas 816

A party to a suit cannot be said to have been prejudically affected within the meaning of Section 11 of the Suits Valuation Act, merely because of a change in the form of appeal consequent upon the under-valuation

Section 11 of the Suits Valuation Act when referring to an under-valuation or over-valuation 'prejudically affecting the disposal of suit or appeal on its merits" is not considering at all the different rules of procedure that there may be an appeal from one court to another.

A trial of a suit by a District Munsiff instead of by a Subjudge owing to an under-valuation, cannot be deemed to be "prejudice" within the meaning of Section 11 of the Suits

Valuation Act to the unsuccessful party on account of the party having a right of 2nd appeal to the High Court on a question of law only, instead a regular appeal on questions of facts also. *Naduvil Edom Karnavan and others* v. *Cheriya Parvathi Nethia and others*, 73 Ind. Cas. 87: (1924) A. I. R. 6 (Madras); 46 Mad 631; 45 M. L. J. 135; 1923 M. W. N. 489; 18 L. W. 1.

The question whether a disposal of a suit has naturally prejudiced a party is to be decided on the facts of each case.

The word used is "disposal" and not "decision."

The disposal of a suit on the merits is prejudically affected when that disposal is made by a District Judge instead of being made by a bench of two judges of the court of the highest jurisdiction in a province and that such lack of jurisdiction cannot be cured by Section 11 of the Suits Valuation Act. *Sheoraj Singh* v. *Musst. Phulbasa Kuar and another*, 1925 A. I. R. 561 (Oudh).

A suit was valued at less than Rs. 5,000 which was found on evidence by the trial court as correct. The suit was decreed and an appeal was preferred before the District Judge who decreed the appeal and dismissed the suit. On a further appeal to District Judge the High Court held that the suit is above Rs. 5,000, hence the appeal as to the District Judge is incompetent and the decree passed by him is without jurisdiction; held further, that the hearing of the appeal by the District Judge had prejudically affected the decision of the case on the merits within the meaning of Section 11 of the Suits Valuation Act, in as much as if the appeal had been filed in the High Court, it would have gone into evidence in the case and dealt with the questions of fact, whereas it was precluded from doing so in a second appeal if the case be heard by the District Judge in the first instance. *Mahanta Rukmin Das* v. *Deva Singh Alias Mahantha Deva Das*, I. L. R. 5 Patna 505.

Valuation— (*over-valuation and under-valuation*).—If the valuation of the suit put on the plaint is contested it is the duty of the court to adjudicate and find what the correct valuation is, *Mohini Mohan Missir* v. *Gour Chandra*, 5 Pat. L. J. 397: 1921 Pat. C. W. N. 195: 1 Pat. L. T. 390: 56 Ind. Cas 762

The question whether or not a suit has been under-valued should be decided on evidence, and documents which contain description are not a safe criterion. *Ram Das* v. *Ajudhia*, 63 Ind Cas 685.

Arbitrary valuation.—In *Aklemunnessa Bibee* v. *Mahomed Hatim*, 31 Cal 849: 8 C. W. N. 705 (709) the Calcutta High Court said:—

"It seems to us to be clear, by the phrases 'over-valuation'

and 'under-valuation' the legislature intended to include all cases of erroneous valuation and that the language of Section 11 is comprehensive enough to cover a case like the present, in which the court exercised, jurisdiction by reason of an arbitrary valuation where no valuation ought to have been made, because the suit is incapable of valuation

Exaggerated valuation.—Where the Subordinate Judge on appeal, was of opinion that claim had been designedly exaggerated and therefore ordered the plaint to be returned to be presented to the Small Cause Court, *held*, as the suit was tried by the first court and as the lower appellate court did not find that the over valuation has prejudically affected the disposal of suit on its merits, the objection as to jurisdiction should not have been given effect to and the lower appellate court was wrong in directing the return of plaint *Hamidunnissa Bibi* v. *Gopalchandra Malakar*, 24 Cal 661; *Muhammad Sharafatulla* v. *Hira Lal*, 16 O. C 257 21 Ind Cas 52

Deliberate exaggeration.—Where the trial court tried the suit on the merits and gave a partial decree to the plaintiff, the appeal court, on appeal preferred by the defendants cannot, without finding that the disposal of the suit has been prejudically affected by such trial, entertain the objection as to jurisdiction and should not have given effect to it *Hamidunnissa Bibee* v *Gopal Chandra Malakar*, 24 Cal. 661: 1 C. W. N 556 See also *Kali Pujari* v *Manjaya*, 21 Mad 271

Bona fide over-valuation.—In cases of *bona fide* over valuation the mere fact that the suit has been over-valued does not deprive the court in which it is brought, of jurisdiction and alter the jurisdiction of the appellate court. *Rajendra Lal Gossami* v *Shama Charan Lahiri*, 5 Cal 188. 4 C L R 417.

But the whole suit should not be dismissed because in the opinion of the lower appellate court, it would have been instituted in some other court *Mohee Lal* v *Khetaram Marwari*, 25 W R 76.

Under Valuation.—See *Mewah Lal* v. *Behary Lal*, 14 W R 195; *Ango Pura Chowdhury* v *Meah Bibee*, 10 W R. 207 *Sheikh Muzlur Ali* v *Mussammat Basoo*, 8 W.R. 46; *Brojo Coomar Sen* v *Ishan Chander Das*, 3 C L. R 1.

Where a suit for pre-emption was under-valued but the suit was tried by the Munsiff, the District Judge on appeal declined to hear the appeal and refused to allow the appellant to make up the deficiency in payment of court fees as the period of limitation has expired

The chief court *held*, that the District Judge has overlooked the provisions of section 11 of the Suits Valuation Act and the

proceedings before the Munsiff were not void for want of jurisdiction and "the deficiency in court fees could be levied after the period has expired" and remanded the case for trial by the Divisional Judge. *Ram* v. *Taja*, 173 P. L. R. 1903: 74 P. R 1903

Where the suit was valued at less than Rs. 5,000 while its real value was above Rs. 5,000 and was heard by the District Judge without objection *held*, that the High Court in second appeal cannot entertain the objection. *Kishen Lal* v. *Rup Chand*, 9 All W. N. 169.

In cases of reckless under-valuation the plaintiff is not entitled to have protection of section 14 of the Limitation Act. *Rukiya Bibi* v *Mubarak Ali*, 14 Ind. Cas. 86.

Error not affecting jurisdiction.—An error in valuation of a suit is not an error, defect or irregularity which affects the merits of the case and an appellate court is restrained by section 350 C P. C (Section 99 of Act V of 1908) from ordering reversal of a decree on such account. *Guddadhur Bannerjee* v. *Premomoyee Debi*, 10 W. R. 286 ; *Ram Gutty* v. *Goona Monee Debia*, 11 W. R. 177.

But in cases of under-valuation, the lower appellate court can modify or reverse the case. Section 350 C. P. C. (99 of Act V of 1908) does not prohibit such a modification or reversal *Hurry Pandey* v. *Bassoo*, 11 W. R. 257.

Mistake —An erroneous assumption, of jurisdiction, through over-valuation does not by itself vitiate the proceedings *Krishnasami* v *Savoy Vijia Raghunatha*, 1 M. L. J. 234.

Objection as to jurisdiction.—(a) *Not taken in the trial court.*

Where the plaintiff instituted a suit in the munsiff's court and made an arbitrary valuation of the suit and the Munsiff exercised jurisdiction without any objection on the part of the de defendant, *held*, that the suit should not be dismissed by an appellate court, having regard to the provision of section 11 of the Suits Valuation Act, on the ground of want of jurisdiction *Aklemunnessa Bibi* v. *Mahd. Hatim*, 31 Cal. 849: 8 C. W. N. 705, but the above case was dissented from in *Jan Mahammad* v. *Masher Bibi*, 34 Cal 352: 11 C W N. 458 and *Zair Hussain Khan* v *Khurshed Jan*, 28 All. 545.

An objection as to jurisdiction of a court must be raised in the trial court and if not so taken, it cannot be raised afterwards *Bankai Sahu* v. *Mosahib Ali*, 46 Ind. Cas. 892.

Where no objection as to jurisdiction was taken by the defendant in the rial court nor any objection was taken in the lower Appellate Court, but on second appeal the stamp reporter

of the Patna High Court took objection as to jurisdiction and valuation , and it did not appear that the disposal of the suit has been in any way prejudically affected; held that the objection cannot be entertained. *Kesho Prasad Singh* v. *Lakhu Rai and others,* 75 Ind Cas. 305: 1923 A. I. R. 581 (Patna).

(*b*) *Other Cases.*—An objection as to disposal of appeal by the District Judge cannot be questioned as being without jurisdiction on the ground that the valuation is beyond the pecuniary jurisdiction of the District Judge unless the disposal of the suit has prejudically affected the decision of the appeal *Satya Kinkar Sahana* v. *Shiba Prosad Singh,* 4 Pat. L. J. 447.

Objections to jurisdiction will not be entertained by the appeal court unless the erroneous valuation has prejudically affected the disposal of the suit on the merits *Amunal* v. *Krishna Nair,* 62 Ind Cas 715 ; *A Vedaji Baskara Tirumal Rao* v. *Subramania Gurukhal,* 52 Ind. Cas 992 But *see Ghulam Akbar Khan* v *Musst Bakhat Bibi,* 116 P. L R. 1915 229 P. W. R 1915: 29 Ind Cas 796 When a suit was improperly valued by the plaintiff, he can in second appeal raise the question as to his own valuation *Cheloo* v. *Kali Das,* 21 P R 1918 44 Ind. Cas 816

Appellate Court returning plaint.—Where an appellate court makes an order returning a plaint for presentation to the proper court, the court of first instance having heard and decided the suit, it is the duty of the appellate court under section 11 of the Suits Valuation Act, 1887, first to find, and to record its reasons for so doing, whether the error in valuation complained of has prejudically affected the disposal of the suit on the merits. *Wahidullah* v *Konhaya Lal,* 25 All 174 ; *Hamidunnessa Bibi* v. *Gopal Chandra Malakar,* 24 Cal 661 , *Raghunath Charan Singh* v. *Shamo Koeri,* 31 Cal. 344 ; *Dalip Singh* v. *Kundan Singh,* 36 All 58 · 12 All. L J 21 · 22 Ind Cas 614 ; *Krishna Sami* v *Parameswaram,* 6 Mad 140.

When a court finds that a suit has been undervalued and that the plaintiff has done so intentionally, it may require the plaintiff to make a fresh valuation and pay proper court fees, but it has not power to amend the valuation itself *Ashing Ali* v *Imtaiz Begam,* 39 All 723 15 A L J 794

Consent of parties does not confer jurisdiction.—If the court had not jurisdiction at the initial stage then no consent by parties can confer jurisdiction *Rajlakshmi Dasse* v. *Katyayani Dasse,* 38 Cal 639 ; *Ledgard* v *Bull,* 13 I A. 134: 9 All 191

Joinder of causes of action.—Where several causes of action are joined together in one suit, which brought the valuation

over Rs. 1,000 that valuation would confer upon a Subordinate Judge jurisdiction to try the suit, notwithstanding the fact that if these suits were instituted separately a Munsiff will have jurisdiction to try the suit. *Mashoollah Khan* v. *Ram Lal Agarwallah*, 6 Cal. 6.

Proceedings pending at commencement of Part I or Part II

12. Nothing in Part I or Part II shall be construed to affect the jurisdiction of any Court—

(*a*) with respect to any suit instituted before rules under Part I applicable to the valuation of the suit take effect, or Part II has come into force, as the case may be, or

(*b*) with respect to any appeal arising out of any such suit.

APPENDIX I.—AMENDMENT ACTS.

A

THE BENGAL COURT FEES AMENDMENT ACT, 1922.

BENGAL ACT IV OF 1922 AND COURT FEES AMENDMENT ACT II OF 1922.

An Act to amend the Court-fees Act, 1870, and the Presidency Small Cause Courts Act, 1882, with reference to the scale of court-fees in Bengal.

Whereas it is necessary to revise the scale of court-fees for Bengal, by amendment of the Court Fees Act, 1870, and the Presidency Small Cause Courts Act, 1882, in their application to Bengal, in the manner hereinafter appearing;

It is hereby enacted as follows:—

Short title, extent and commencement.

1. (1) This Act may be called the Bengal Court Fees (Amendment) Act, 1922.

(2) It extends to the whole of Bengal

(3) It shall come into force on the first day of April, 1922.

Application of Act

2. The Court Fees Act, 1870, as amendment by subsequent legislation, and the Presidency Small Cause Courts Act, 1882, as amended by subsequent legislation, shall be amended, in their application to Bengal, in the manner hereinafter provided.

Amendment of section 18 of Act VII of 1870

3. In section 18 of the Court Fees Act, 1870, for the words "a fee of eight annas" the words "a fee of one rupee" shall be substituted

Amendment of section 19

4. In item viii, in section 19 of the same Act for the words "one thousand rupees" the words "two thousand rupees" shall be substituted.

Amendment of Schedule I, Article 1.

5. For Article 1 in the first schedule to the same Act the following shall be substituted, namely:—

Number.		Proper fee.
"1. Plaint, written statement pleading a set-off, or counter-claim or memorandum of appeal (not otherwise provided for in this Act) or of cross-objection presented to Civil or Revenue Court except those mentioned in section 3.	When the amount or value of the subject-matter in disputes does not exceed seventy-five rupees, for every five rupees or part of such amount or value,	Six annas.
	and when such amount or value exceeds seventy-five rupees for every five rupees or part thereof, in excess of seventy-five rupees, up to one hundred rupees,	Eight annas.
	and when such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees, up to one hundred and fifty rupees,	One rupee two annas
	and when such amount or value exceeds one hundred and fifty rupees, for every ten rupees, or part thereof, in excess of one hundred and fifty rupees up to one thousand rupees,	One rupee two annas.
	and when such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees, up to seven thousand five hundred rupees,	Seven rupees eight annas.
	and when such amount or value exceeds seven thousand five hundred rupees, for every two hundred and fifty rupees or part thereof, in ex-	Fifteen rupees.

1 Plaint, etc.—*contd*	cess of seven thousand five hundred rupees, up to ten thousand rupees,	
	and	
	when such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees,	Twenty-two rupees eight annas.
	and	
	when such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to fifty thousand rupees,	Thirty rupees.
	and	
	when such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty *thousand rupees*	Thirty-seven rupees eight annas
	Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be ten thousand rupees "	

Amendment of Schedule I, Article 6

6. In the third column in Article 6 in the same schedule to the same Act,—

(*a*) for the words "Four annas," opposite clause (*a*) in the second column, the words "Six annas" shall be substituted ; and

(*b*) for the words "Eight annas," opposite the first item in clause (*b*) in the second column, the words "Twelve annas" shall be substituted, and for the words "One rupee," opposite the second item in that clause, the words "One rupee eight annas" shall be substituted.

Amendment of Schedule I, Article 11

7. For the entries above the proviso in the second *column, and for the entries in the* third column in Article 11 in the same schedule to the same Act, the following shall be substituted, namely :—

"When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two thousand rupees, on such amount or value up to ten thousand rupees,	Two per centum
and	
when such amount or value exceeds ten thousand rupees, on the portion of such amount or value which is in excess of ten thousand rupees up to fifty thousand rupees,	Three per centum.
and	
when such amount or value exceeds fifty thousand rupees, on the portion of such amount or value which is in excess of fifty thousand rupees up to one lakh of rupees,	Four per centum
and	
when such amount or value exceeds a lakh of rupees, on the portion of such amount or value which is in excess of one lakh of rupees.	Five per centum.

Amendment of Schedule I, Article 12.

8. For the entry in the second column in Article 12 in the same schedule to the same Act, and for the first paragraph in the third column in the said Article, the following shall be substituted, namely:—

"When the amount or value of any debt or security specified in the certificate under section 8 of the Act exceeds one thousand rupees, on such amount or value up to ten thousand rupees,	Two per centum on such amount or value and three per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act
and	
when such amount or value exceeds ten thousand rupees, on the portion of such amount or value which is in excess of ten thousand rupees up to fifty thousand rupees,	Three per centum on such amount or value and four-and-a-half per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act.
and	
when such amount or value exceeds fifty thousand rupees, on the portion of such amount or value which is in excess of fifty	Four per centum on such amount or value and six per centum on the amount or value of any debt or security to which the certi-

thousand rupees up to one lakh of rupees,	ficate is extended under section 10 of the Act.
and	
when such amount or value exceeds a lakh of rupees, on the portion of such amount or value which is in excess of one lakh of rupees.	Five per centum on such amount or volue and seven-and-a-half per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act."

Amendment of table of rates of *ad valorem* fees.

9. For the table of rates of *ad valorem* fees leviable on the institution of suits, at the end of the same schedule to the same Act, the table set forth in the schedule to this Act shall be substituted

Amendment of Schedule II, *Article* I, clauses (*a*), (*b*) and (*c*)

10. In Article I in the second schedule to the same Act—

(*a*) in clause (*a*) after the words "Municipal Commissioner" in the third entry in the second column the words "or member of a District Board" shall be inserted;

(*b*) (*i*) for the words "One anna," opposite clause (*a*) in the second column, the words "Two annas" shall be substituted

(*ii*) for the words "Eight annas," opposite clause (*b*) in the second column, the following shall be substituted namely:—

"In the case of a complaint or charge of an offence presented to a criminal court one rupee, and in other cases twelve annas;" and

(*iii*) for the words "One rupee," opposite clause (*c*) in the second column, the words "One rupee eight annas" shall be substituted

Amendment of Schedule II, Article I clause (*d*).

11. For clause (*d*) in the second column in Article I in the same schedule to the same Act, and for the entries opposite that clause in the third column thereof, the following clause and entries shall be *substituted, namely* —

"(*d*) (*i*) When presented to the High Court under section 115 of the Code of Civil Procedure 1908, for revision of an order—

(*a*) when the value of the suit to which the order relates does not exceed Rs 1,000; . Five rupees.

(*b*) when the value of the suit exceed Rs. 1,000. ... Ten rupees.

(*ii*) When presented to the High Court otherwise than under that section. .. ... Two rupees."

Amendment of Schedule II, Article 10

12. In the third column in Article 10 in the same schedule to the same Act,—

(1) for the words "Eight annas," opposite clause (*a*) in the second column, the words "One rupee" shall be substituted;

(2) for the words "One rupee," opposite clause (*b*) in the second column, the words "One rupee eight annas" shall be substituted.

Amendment of Schedule II, Article 11

13. For Article 11 in the same schedule to the same Act the following shall be substituted, namely:—

"11. Memorandum of appeal when the appeal is not from a decree or an order having the force of a decree and is presented.	(*a*) (*i*) to any revenue Court or Executive Officer other than the High Court or Chief Controlling Revenue or Executive Authority,	Eight annas.
	(*ii*) to any Civil Court other than a High Court,	One rupee.
	(*b*) to a Chief Controlling Executive or Revenue Authority.	Two rupees.
	(*c*) to a High Court	Five rupees

Amendment of Schedule II, Article 12.

14. Above the words "Five rupees," where they occur in the third column, opposite Article 12 and 13 in the same schedule to the same Act, the words "Ten rupees" shall be inserted opposite Article 12 and the bracket between Articles 12 and 13 in the second column shall be omitted.

Amendment of Schedule II, Article 17

15. (1) The words "Ten rupees" in the third column opposite Article 17 in the same schedule to the same Act, and the bracket opposite that article in the second column in the same schedule shall be omitted.

(2) In the third column in the said article,—

(*a*) opposite entries i, ii, iv and vi, the words "Fifteen rupees" shall be inserted; and

(*b*) opposite entries iii and v, the words "Twenty rupees" shall be inserted.

Amendment of section 71 of Act XV of 1882.

16. In section 71 of the Presidency Small Cause Courts Act, 1882,—

(1) in clause (a) for the words "five hundred rupees" the words "fifty rupees" shall be substituted ;

(2) after clause (a) the following shall be inserted, namely .—

"(b) when the amount or value of the subject-matter exceeds fifty rupees, but does not exceed five hundred rupees—the sum of six rupees four annas and three annas in the rupee on the excess of such amount or value over fifty rupees ,"

(3) clause (b) shall be renumbered as clause (c) and in that clause as renumbered for the words "sixty-two rupees eight annas" the words "ninety rupees ten annas" shall be substituted, and after the words "one anna" the words "six pies" shall be inserted

Exemption of certain probates, letters of administration and certificates

17. Nothing in this Act shall apply to any probate, letters of administration or certificate in respect of which the fee payable under the law for the time being in force has been paid prior to the commencement of this Act, but which have not issued

For construction of this section see *Thaddeus* v. *The Secretary of State for India*, 39 C L J 209 (24).

THE SCHEDULE.

Table of rate of 'ad valorem' fees leviable on the Institution of suits.

(*See* section 9 of the Bengal Court-fees (Amendment) Act, 1922)

When the amount or value of the subject-matter exceeds	But does not exceed	Proper fees under Ben Act IV of 1922 (Bengal).	Proper fees under Assam Act II of 1922 (Assam).
Rs	Rs	Rs. A	
.	5	0 6	
5	10	0 12	
10	15	1 2	
15	20	1 8	
20	25	1 14	Same as in Bengal
25	30	2 4	
30	35	2 10	
35	40	3 0	
40	45	3 6	
45	50	3 12	
50	55	4 2	
55	60	4 8	
60	65	4 14	
65	70	5 4	
70	75	5 10	
75	80	6 2	6 0
80	85	6 10	6 6
85	90	7 2	6 12
90	95	7 10	7 2
95	100	8 2	7 8
100	110	9 12	12 6
110	120	11 6	13 8
120	130	13 0	14 10
130	140	14 10	15 12
140	150	16 4	16 14
150	160	18 0	18 0
160	170	19 2	19 2
170	180	20 4	
180	190	21 6	
190	200	22 8	
200	210	23 10	
210	220	24 12	The rest same as in Bengal.
220	230	25 14	
230	240	27 0	
240	250	28 2	
250	260	29 4	
260	270	30 6	
270	280	31 8	
280	290	32 10	
290	300	33 12	
300	310	34 14	

THE SCHEDULE.

Table of rates of 'ad valorem' fees leviable on the Institution of suits.

[*See* section 9 of the Bengal Court-fees (Amendment) Act, 1922.]

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fees under Ben Act IV of 1922 (Bengal).	Proper fees under Assam Act II of 1922 (Assam)
Rs A	Rs A.	Rs A	Same as in Bengal.
310	320	36 0	
320	330	37 2	
330	340	38 4	
340	350	39 6	
350	360	40 8	
360	370	41 10	
370	380	42 12	
380	390	43 14	
390	400	45 0	
400	410	46 2	
410	420	47 4	
420	430	48 6	
430	440	49 8	
440	450	50 10	
450	460	51 12	
460	470	52 14	
470	480	54 0	
480	490	55 2	
490	500	56 4	
500	510	57 6	
510	520	58 8	
520	530	59 10	
530	540	60 12	
540	550	61 14	
550	560	63 0	
560	570	64 2	
570	580	65 4	
580	590	66 6	
590	600	67 8	
600	610	68 10	
610	620	69 12	
620	630	70 14	
630	640	72 0	
640	650	73 2	
650	660	74 4	
660	670	75 6	
670	680	76 8	
680	690	77 10	
690	700	78 12	
700	710	79 14	
710	720	81 0	
720	730	82 2	
730	740	83 4	
740	750	84 6	

THE SCHEDULE.

Table of rates of 'ad valorem' fees leviable on the Institution of suits.

[*See* section 9 of the Bengal Court-fees (Amendment) Act, 1922.]

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fees under Ben. Act IV of 1922 (Bengal).	Proper fees under Assam Act II of 1922 (Assam).
Rs. A.	Rs A	Rs. A.	Same as in Bengal
750	760	85 8	
760	770	86 10	
770	780	87 12	
780	790	88 14	
790	800	90 0	
800	810	91 2	
810	820	92 4	
820	830	93 6	
830	840	94 8	
840	850	95 10	
850	860	96 12	
860	870	97 14	
870	880	99 0	
880	890	100 2	
890	900	101 4	
900	910	102 6	
910	920	103 8	
920	930	104 10	
930	940	105 12	
940	950	106 14	
950	960	108 0	
960	970	109 2	
970	980	110 4	
980	990	111 6	
990	1,000	112 8	
1,000	1,100	120 0	
1,100	1,200	127 8	
1,200	1,300	135 0	
1,300	1,400	142 8	
1,400	1,500	150 0	
1,500	1,600	157 8	
1,600	1,700	165 0	
1,700	1,800	172 8	
1,800	1,900	180 0	
1,900	2,000	187 8	
2,000	2,100	195 0	
2 100	2,200	202 8	
2,200	2,300	210 0	
2,300	2,400	217 8	
2,400	2,500	225 0	
2,500	2,600	232 8	
2,600	2,700	240 0	
2,700	2,800	247 8	
2,800	2,900	255 0	

The Schedule.

Table of rates of 'ad valorem' fees leviable on the Institution of suits

[See section 9 of the Bengal Court-fees (Amendment) Act, 1922.]

When the amount or value of the subject-matter exceeds	But does not exceed.	Proper fees under Ben Act IV of 1922 (Bengal).		Proper fees under Assam Act II of 1922 (Assam)
Rs A	Rs A	Rs	A	Same as in Bengal.
2,900	3,000	262	8	
3,000	3,100	270	0	
3,100	3,200	277	8	
3,200	3,300	285	0	
3,300	3,400	292	8	
3,400	3,500	300	0	
3,500	3,600	307	8	
3,600	3,700	315	0	
3,700	3,800	322	8	
3,800	3,900	330	0	
3,900	4,000	337	8	
4,000	4,100	345	0	
4,100	4,200	352	8	
4,200	4,300	360	0	
4,300	4,400	367	8	
4,400	4,500	375	0	
4,500	4,600	382	8	
4 600	4,700	390	0	
4,700	4,800	397	8	
4,800	4,900	405	0	
4,900	5,000	412	8	
5,000	5,100	420	0	
5,100	5,200	427	8	
5,200	5,300	435	0	
5,300	5,400	442	8	
5 400	5,500	450	0	
5,500	5,600	457	8	
5,600	5,700	465	0	
5,700	5,800	472	8	
5,800	5 900	480	0	
5,900	6,000	487	8	
6 000	6,100	495	0	
6,100	6,200	502	8	
6 200	6,300	510	0	
6,300	6,400	517	8	
6,400	6,500	525	0	
6,500	6 600	532	8	
6,600	6 700	540	0	
6,700	6,800	547	8	
6,800	6 900	555	0	
6 900	7,000	562	8	
7,000	7 100	570	0	
7,100	7 200	577	8	
7,200	7,300	585	0	

THE SCHEDULE.

Table of rates of 'ad valorem' fees leviable on the Institution of suits.

[*See* section 9 of the Bengal Court-fees (Amendment) Act, 1922.]

When the amount or value of the subject-matter exceeds	But does not exceed.	Proper fees under Ben. Act IV of 1922 (Bengal).	Proper fees under Assam Act II of 1922 (Assam).
Rs. A.	Rs. A.	Rs. A.	Same as in Bengal.
7,300	7,400	592 0	
7,400	7,500	600 0	
7,500	7,750	615 0	
7,750	8,000	630 0	
8,000	8,250	645 0	
8,250	8,500	660 0	
8,500	8,750	675 0	
8,750	9,000	690 0	
9,000	9,250	705 0	
9,250	9,500	720 0	
9,500	9,750	735 0	
9,750	10,000	750 0	
10,000	10,500	772 8	
10,500	11,000	795 0	
11,000	11,500	817 8	
11,500	12,000	840 0	
12,000	12,500	862 8	
12,500	13,000	885 0	
13,000	13,500	907 8	
13,500	14,000	930 0	
14,000	14,500	952 8	
14,500	15,000	975 0	
15,000	15,500	997 8	
15,500	16,000	1,020 0	
16,000	16 500	1,042 8	
16,500	17,000	1,065 0	
17,000	17,500	1,087 8	
17,500	18 000	1,110 0	
18,000	18 500	1,132 8	
18,500	19 000	1,155 0	
19,000	19,500	1,177 8	
19 500	20,000	1,200 0	
20,000	21,000	1,230 0	
21,000	22 000	1,260 0	
22,000	23 000	1,290 0	
23,000	24,000	1,320 0	
24,000	25 000	1,350 0	
25,000	26 000	1,380 0	
26,000	27 000	1,410 0	
27,000	28 000	1,440 0	
28,000	29 000	1,470 0	
29,000	30 000	1,500 0	
30,000	31 000	1,530 0	
31,000	32 000	1,560 0	
32 000	33 000	1,590 0	

THE SCHEDULE.

Table of rates of 'ad valorem' fees leviable on the Institution of suits.

[*See* section 9 of the Bengal Court-fees (Amendment) Act, 1922.]

When the amount or value of the subject-matter exceeds.	But does not exceed	Proper fees under Ben Act IV of 1922 (Bengal).	Proper fees under Assam Act II of 1922 (Assam).
Rs A.	Rs A.	Rs A	Same as in Bengal.
33,000	34,000	1,620 0	
34,000	35,000	1,650 0	
35,000	36 000	1,680 0	
36 000	37 000	1,710 0	
37,000	38 000	1,740 0	
38,000	39,000	1,770 0	
39 000	40 000	1,800 0	
40,000	41,000	1,830 0	
41,000	42,000	1,860 0	
42,000	43,000	1,890 0	
43,000	44 000	1,920 0	
44,000	45,000	1,950 0	
45,000	46,000	1,980 0	
46,000	47 000	2,010 0	
47,000	48,000	2,040 0	
48,000	49,000	2,070 0	
49,000	50,000	2,100 0	
50,000	55,000	2,137 8	
55,000	60,000	2,175 0	
60,000	65,000	2,212 8	
65,000	70,000	2,250 0	
70,000	75,000	2,287 0	
75,000	80,000	2,320 0	
80,000	85,000	2,362 8	
85,000	90,000	2,400 0	
90,000	95,000	2,437 8	
95,000	1,00,000	2,475 0	
1,00,000	1,05,000	2,512 8	
1,05,000	1,10,000	2,550 0	
1,10,000	1,15,000	2,587 8	
1,15,000	1,20,000	2,625 0	
1,20,000	1,25,000	2,662 8	
1,25,000	1,30,000	2,700 0	
1,30,000	1,35,000	2,737 8	
1,35,000	1,40,000	2,775 0	
1,40,000	1,45,000	2,812 6	
1,45,000	1,50,000	2,850 0	
1,50,000	1,55,000	2,887 8	
1,55,000	1,60,000	2,925 0	
1,60,000	1,65,000	2,962 8	
1,65,000	1,70,000	3,000 0	
1,70,000	1,75,000	3,037 8	
1,75,000	1,80,000	3,075 0	
1,80,000	1,85,000	3,112 8	

THE SCHEDULE.

Table of rates of 'ad valorem' fees leviable on the Institution of suits.

[*See* section 9 of the Bengal Court-fees (Amendment) Act, 1922.]

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fees under Ben. Act IV of 1922 (Bengal)	Proper fees under Assam Act II of 1922 (Assam).
Rs A.	Rs A.	Rs. A.	Same as in Bengal.
1,95,000			
1,85,000	1,90,000	3,150 0	
1,90,000	1,95,000	3,187 8	
1,95,000	2,00,000	3,225 0	
2,00,000	2,05,000	3,262 8	

and the fee increases at the rate of thirty-seven rupees eight annas for every five thousand rupees, or part thereof, up to a maximum of ten thousand rupees, for example—

	Rs. A.
3,00,000	4,012 8
4,00,000	4,762 8
5,00,000	5,512 8
6,00,000	6,262 8
7,00,000	7,012 8
8,00,000	7,762 8
9,00,000	8,512 8
10,00,000	9,262 8
11,00,000	10,000 0

B

ASSAM COURT-FEES AMENDMENT ACT, 1922.

(ASSAM ACT II of 1922.)

An Act to amend the Court-fees Act, 1870, with reference to the scale of court-fees in Assam.

Whereas it is necessary to revise the scale of court fees for Assam, by amendment of the Court Fees Act, 1870, in its application to Assam, in the manner hereinafter appearing;

It is hereby enacted as follows:—

Short title, extent and commencement

1. (1) This Act may be called the Assam Court Fees (Amendment) Act, 1922.

(2) It extends to the whole of Assam.

(3) It shall come into force on the first day of May, 1922, and shall remain in force for a period of three years.

NOTE:—This Act has been extended for three years more

Application of Act

2. The Court Fees Act, 1870, as amended by subsequent legislation, shall be amended, in its application to Assam, in the manner hereinafter provided.

Amendment of section 18 of Act VII of 1870

3. In section 18 of the Court Fees Act, 1870, hereinafter referred to as "the said Act," for the words "a fee of eight annas" the words "a fee of one rupee" shall be substituted

Amendment of section 19

4. In item viii in section 19 of the said Act, for the words "one thousand rupees" the words "two thousand rupees" shall be substituted

Amendment of Schedule I, Article 1

5. For Article 1 in the first schedule to the said Act the following shall be substituted namely:—

Number.		Proper fee
"1. Plaint, written statement pleading a set-off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) or of cross-objection presented to any Civil or Revenue Court except those mentioned in section 3.	When the amount or value of the subject-matter in dispute does not exceed one hundred rupees, for every five rupees or part of such amount or value, and	Six annas.
	when such amount or value exceeds one hundred rupees, for every *ten rupees or* part thereof, up to one thousand rupees, and	One rupee two annas
	when such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees, up to seven thousand five hundred rupees, and	Seven rupees eight *annas*.
	when such amount or value exceeds seven thousand five hundred rupees, for every two hundred and fifty rupees, or part thereof, in excess of seven thousand five hundred rupees, up to ten thousand rupees, and	Fifteen rupees.
1 Plaint, etc,	when such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees, and	Twenty-two rupees *eight annas*.
	when such amount or value exceeds twenty thousand rupees, for every *one thousand* rupees, or part thereof, in excess of twenty thousand rupees, up to fifty thousand rupees, and	Thirty rupees

when such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees : Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be ten thousand rupees "	Thirty-seven rupees eight annas.

Amendment of Schedule I, Article 6

6. In the third column in Article 6 in the same schedule to the said Act,—

(a) for the words "Four annas," opposite clause (a) in the second column, the words "Six annas" shall be substituted , and

(b) For the words "Eight annas" opposite the first item in clause (b) in the second column, the words "twelve annas" shall be substituted, and for the words "one rupee" opposite the second item in that clause, the words "one rupee eight annas" shall be substituted.

Amendment of Schedule I, Article 11

7. For the entries above the proviso in the second column and for the entries in the third column, in Article 11 in the same schedule to the said Act, the following shall be substituted, namely :—

"When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two thousand rupees, but does not exceed ten thousand rupees,	Two per centum on such amount or value
and	
when such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees, for the portion of such amount or value which is in excess of ten thousand rupees,	Three per centum on such amount or value
and	
when such amount or value exceeds fifty thousand rupees, but does not exceed a lakh of rupees, for the portion of such amount or value which is in excess of fifty thousand rupees,	Four per centum on such amount or value
and	

when such amount or value exceeds a lakh of rupees for the portion of such amount or value which is in excess of a lakh of rupees.	Five per centum on such amount or value.

Amendment of Schedule I, Article 12

8. For the entry in the second column in Article 12 in the same schedule to the said Act, and for the first paragraph in the third column in the said article, the following shall be substituted, namely:—

"When the amount or value of any debt or security specified in the certificate under section 8 of the Act exceeds one thousand rupees, but does not exceed ten thousand rupees	Two per centum on such amount or value, and three per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act
and	
when such amount or value exceeds ten thousand rupees, but does not exceed fifty thousand rupees, for the portion of such amount or value which is in excess of ten thousand rupees,	Three per centum on such amount or value, and four-and-a-half per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act.
and	
when such amount or value exceeds fifty thousand rupees, but does not exceed a lakh of rupees, for the portion of such amount or value which is in excess of fifty thousand rupees,	Four per centum on such amount or value and six per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act.
when such amount or value exceeds a lakh of rupees, for the portion of such amount or value which is in excess of a lakh of rupees.	Five per centum on such amount or value and seven-and-a-half per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act.

Amendment of table of rates of *ad valorem* fees.

9. For the table of rates of *ad valorem* fees leviable on the institution of suits, at the end of the same Schedule to the said Act, the table set forth in the Schedule to this Act shall be substituted.

Amendment of Schedule II, Article 1, clauses (*a*), (*b*) and (*c*).

10. In Article 1 in the second schedule to the said Act—

(*a*) in clause (*a*) after the words "Municipal Commissioner" in the third entry in the second column the words "or member of a Local Board" shall be inserted;

(*b*) (*i*) for the words "One anna" opposite clause (*a*) in the second column, the words "Two annas" shall be substituted

(*ii*) for the words "Eight annas" opposite clause (*b*) in the second column, the following shall be substituted, namely —

"In the case of a complaint or charge of an offence presented to a criminal court one rupee, and in other cases ten annas; and"

(*iii*) for the words "One rupee" opposite clause (*c*) in the second column, the words "One rupee and eight annas" shall be substituted

Amendment of Schedule II, Article 10

11. In the third column in Article 10 in the same schedule to the said Act—

(1) for the words "eight annas," opposite clause (*a*) in the second column, the words "one rupee" shall be substituted, and

(2) for the words "one rupee," opposite clause (*b*) in the second column, the words "one rupee and eight annas" shall be substituted

Amendment of Schedule II, Article 11

12. For Article 11 of the same schedule to the said Act, the following shall be substituted, namely.—

"11 Memorandum of appeal when the appeal is not from a decree or an order having the force of a decree and is presented	(*a*) (*i*) to any revenue court or Executive Officer other than the High Court or Chief Controlling Revenue or Executive Authority,	Eight annas
	(*ii*) to any Civil Court other than a High Court,	One rupee
	(*b*) to a Chief Controlling Executive or Revenue Authority,	Two rupees

Amendment of Schedule II, Article 12

13. Above the words "five rupees" where they occur in the third column, opposite Articles 12 and 13, in the same schedule to the said Act, the words "ten rupees" shall be inserted opposite Article 12, and the bracket between Articles 12 and 13 in the second column shall be omitted

Amendment of Schedule II, Article 17

14. (1) The words "ten rupees" in the third column opposite Article 17 in the same schedule to the said Act and the bracket opposite that article in the second column in the same schedule shall be omitted.

(2) In the third column in the said article—

(*a*) opposite entries (*i*), (*ii*), (*iii*), (*iv*) and (*vi*), the words "fifteen rupees" shall be inserted ; and

(*b*) opposite entry (*v*) the words "twenty rupees" shall be inserted.

Exemption of certain probates, letters of administration and certificates

15. Nothing in this Act shall apply to any probate, letters of administration or certificate in respect of which the fee payable under the law for the time being in force has been paid prior to the commencement of this Act but which have not issued.

THE SCHEDULE.

N. B—For Table of Rates of *ad valorem* fees leviable on the institution of suits, *vide supra* with Bengal Court Fees (Amendment) Acts.

C

BIHAR AND ORISSA COURT-FEES AMENDMENT ACT, 1922.

(B. & O. ACT I OF 1922.)

Whereas it is expedient to amend the Court-fees Act, 1870, in its application to the Province of Bihar and Orissa in the manner hereinafter appearing;

It is hereby enacted as follows:—

Short title, extent and commencement

1. (1) This Act may be called the Bihar and Orissa Court Fees (Amendment) Act, 1922.

(2) It extends to the whole of Bihar and Orissa including the Santal Parganas.

(3) It shall come into force on the twenty-fourth day of August, 1922.

Amendment of section 4

2. In paragraph 3 of section 4 of the Court Fees Act, 1870, as amended by subsequent legislation and hereinafter called the principal Act, for the word "two" shall be substituted the word "one."

Amendment of section 7.

3. In clause (*a*) of section 7 (*v*) of the principal Act, for the word' 'ten" shall be substituted the word "twenty" and in clause (*b*) of the said section for the word "five," shall be substituted the word "ten."

Amendment of section 17

4. In section 17 of the principal Act, after the words "of appeal" in both places where they occur the words "or of cross objection" shall be inserted.

Amendment of section 18

5. It section 18 of the principal Act, for the words "a fee of eight annas" the words "a fee of twelve annas" shall be substituted.

Amendment of section 19

6. In item viii. of section 19 of the principal Act, for the words "one thousand rupees" the words two thousand rupees" shall be substituted.

7. (1) In Article 1 of Schedule I of the principal Act, for the entry in the first column the following entry shall be substituted, namely:—

Amendment of Article 1 of Schedule I.

"(1) Plaint, written statement pleading a set-off or counterclaim or memorandum of appeal or of cross-objection, not otherwise provided for in this Act, presented to any Civil or Revenue Court except those mentioned in section 3."

(2) For the "proper fees" set out in the third column of the said Schedule 1 and shown opposite Article 1 in Schedule A of this Act, the "proper fees" shown against them in the second column of the said Schedule A shall be substituted.

(3) The proviso in Article 1 of the said Schedule 1 shall be omitted.

8. For the "proper fees" set out in Schedule I of the principal Act for Articles 6, 7, 8 and 9 and shown in Schedule A of this Act, the "proper fees" shown against them in the second column of the said Schedule A shall be substituted.

Amendment of Articles 6, 7, 8 and 9 of Schedule I

9. For the entries above the proviso in the second column and for the entries in the third column, in Article 11 of Schedule I of the principal Act, the following shall be substituted, namely:—

Amendment of Article 11 of Schedule I.

"When the amount or value of the property in respect of which the grant of probate or letters is made exceeds two thousand rupees, on such amount or value up to ten thousand rupees.	Two per centum.
and	
when such amount or value exceeds ten thousand rupees, on the portion of such amount or value which is in excess of ten thousand rupees up to fifty thousand rupees,	Three per centum.
and	
when such amount or value exceeds fifty thousand rupees, on the portion of such amount or value which is in excess of fifty thousand rupees up to one lakh of rupees,	Four per centum.
and	

when such amount or value exceeds a lakh of rupees, on the portion of such amount or value which is in excess of one lakh of rupees.	Five per centum

Amendment of Article 12 of Schedule I

10. For the entry in the second column of Article 12 of Schedule I of the principal Act, and for the first paragraph in the third column of the said Article, the following shall be substituted, namely:—

"When the amount or value of any debt or security specified in the certificate under section 8 of the Act exceeds one thousand rupees, on such amount or value up to ten thousand rupees,	Two per centum, and on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act, three per centum
and	
when such amount or value exceeds ten thousand rupees, on the portion of such amount or value which is in excess of ten thousand rupees up to fifty thousand rupees,	Three per centum, and on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act, four and-a-half per centum
and	
when such amount or value exceeds fifty thousand rupees, on the portion of such amount or value which is in excess of fifty thousand rupees up to one lakh of rupees	Four per centum, and on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act, six per centum
and	
when such amount or value exceeds a lakh of rupees, on the portion of such amount or value which is in excess of one lakh of rupees	Five per centum, and on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act, seven and-a-half per centum"

Amendment of table of rates in Schedule I

11. For the table of rates of *ad valorem* fees annexed to Schedule I of the principal Act, the table set forth in Schedule B of this Act shall be substituted

Amendment of Schedule II

12. (1) In the first column of the said Schedule II after the words "memorandum of appeal" in Articles 5, 11, 17, 20 and 21 the words

(2) For the "

and sh

fees" shown against them in the second column of the said Schedule C shall be substituted.

Exemption of certain probates, letters of administration and certificates

13. Nothing in this Act shall apply to any probate, letters of administration or certificate under the Succession Certificate Act, 1889, in respect of which the fee payable under the law for the time being in force has been paid prior to the commencement of this Act, but which have not issued.

SCHEDULE A.

[*See* section 7 (3) and 8 of the Bihar and Orissa Court Fees (Amendment) Act, 1922.]

	Proper fees set out in Sch I of the principal Act	Proper fees to be substituted.
Article 1	Twelve annas	One rupee
	Five rupees	Seven rupees and eight annas.
	Ten rupees	Fifteen rupees.
	Fifteen rupees	Twenty-two rupees and eight annas.
	Twenty rupees	*Thirty rupees*
	Twenty rupees	Thirty rupees.
	Twenty-five rupees	Thirty-seven rupees and eight annas
Article 6	Four annas	Six annas.
	Eight annas	Twelve annas
	One rupee	One rupee and eight annas
Article 7	Eight annas	Twelve annas.
	One rupee	One rupee and eight annas.
	Four rupees	*Six rupees.*
Article 8	The amount of the duty chargeable on the original	One and-a-half times the amount of the duty chargeable on the original
	Eight annas	Twelve annas.
Article 9	Eight annas	Twelve annas

SCHEDULE B.

Table of rates of 'ad valorem' fees leviable on the institution of suits.

[*See* Section 7 of the Bihar and Orissa Court Fees (Amendment) Act, 1922.]

When the amount or value of the subject-matter exceeds	But does not exceed	Proper fees under B & O Act I of 1922		When the amount or value of the subject-matter exceeds	But does not exceed	Proper fees under B. & O Act I of 1922.	
Rs	Rs	Rs	A	Rs	Rs	Rs	A
	5	0	6	270	280	25	8
5	10	0	12	280	290	26	8
10	15	1	2	290	300	27	8
15	20	1	8	300	310	28	8
20	25	1	14	310	320	29	8
25	30	2	4	320	330	30	8
30	35	2	10	330	340	31	8
35	40	3	0	340	350	32	8
40	45	3	6	350	360	33	8
45	50	3	12	360	370	34	8
50	55	4	2	370	380	35	8
55	60	4	8	380	390	36	8
60	65	4	14	390	400	37	8
65	70	5	4	400	410	38	8
70	75	5	10	410	420	39	8
75	80	6	0	420	430	40	8
80	85	6	6	430	440	41	8
85	90	6	12	440	450	42	8
90	95	7	2	450	460	43	8
95	100	7	8	460	470	44	8
100	110	8	8	470	480	45	8
110	120	9	8	480	490	46	8
120	130	10	8	490	500	47	8
130	140	11	8	500	510	48	8
140	150	12	8	510	520	49	8
150	160	13	8	520	530	50	8
160	170	14	8	530	540	51	8
170	180	15	8	540	550	52	8
180	190	16	8	550	560	53	8
190	200	17	8	560	570	54	8
200	210	18	8	570	580	55	8
210	220	19	8	580	590	56	8
220	230	20	8	590	600	57	8
230	240	21	8	600	610	58	8
240	250	22	8	610	620	59	8
250	260	23	8	620	630	60	8
260	270	24	8	630	640	61	8

Table of rates of 'ad valorem' fees leviable on the institution of suits.

[See section 1 of the Bihar and Orissa Court Fees (Amendment) Act, 1922.]

When the amount or value of the subject-matter exceeds	But does not exceed	Proper fees under B. & O Act I of 1922	
Rs	Rs	Rs	A
640	650	62	8
650	660	63	8
660	670	64	8
670	680	65	8
680	690	66	8
690	700	67	8
700	710	68	8
710	720	69	8
720	730	70	8
730	740	71	8
740	750	72	8
750	760	73	8
760	770	74	8
770	780	75	8
780	790	76	8
790	800	77	8
800	810	78	8
810	820	79	8
820	830	80	8
830	840	81	8
840	850	82	8
850	860	83	8
860	870	84	8
870	880	85	8
880	890	86	8
890	900	87	8
900	910	88	8
910	920	89	8
920	930	90	8
930	940	91	8
940	950	92	8
950	960	93	8
960	970	94	8
970	980	95	8
980	990	96	8
990	1,000	97	8
1,000	1,100	105	0
1,100	1,200	112	8
1,200	1,300	120	0
1,300	1,400	127	8
1,400	1,500	135	0
1,500	1,600	142	8
1,600	1,700	150	0
Rs	Rs.	Rs	A
1,700	1,800	157	8
1,800	1,900	165	0
1,900	2,000	172	8
2,000	2,100	180	0
2,100	2,200	187	8
2,200	2,300	195	0
2,300	2,400	202	8
2,400	2,500	210	0
2,500	2,600	217	8
2,600	2,700	225	0
2,700	2,800	232	8
2,800	2,900	240	0
2,900	3,000	247	8
3,000	3,100	255	0
3,100	3,200	262	8
3,200	3,300	270	0
3,300	3,400	277	8
3,400	3,500	285	0
3,500	3,600	292	8
3,600	3,700	300	0
3,700	3,800	307	8
3,800	3,900	315	0
3,900	4,000	322	8
4,000	4,100	330	0
4,100	4,200	337	8
4,200	4,300	345	0
4,300	4,400	352	8
4,400	4,500	360	0
4,500	4,600	367	8
4,600	4,700	375	0
4,700	4,800	382	8
4,800	4,900	390	0
4,900	5,000	397	8
5,000	5,250	412	8
5,250	5,500	427	8
5,500	5,750	442	8
5,750	6,000	457	8
6,000	6,250	472	8
6,250	6,500	487	8
6,500	6 750	502	8
6 750	7,000	517	8
7,000	7,250	532	8
7,250	7,500	547	8

Table of Rates of 'ad valorem' fees leviable on the institution of suits.

[See section 1 of the Bihar and Orissa Court Fees (Amendment) Act, 1922]

When the amount or value of the subject-matter exceeds	But does not exceed	Proper fees under B & O Act I of 1922	When the amount or value of the subject-matter exceeds	But does not exceed	Proper fees under B & O Act I of 1922
Rs	Rs	Rs A			Rs A
7,500	7,750	562 8	32,000	34,000	1,507 8
7,750	8,000	577 8	34,000	36,000	1,537 8
8,000	8,250	592 8	36,000	38,000	1,567 8
8,250	8,500	607 8	38,000	40,000	1,597 8
8,500	8,750	622 8	40,000	42,000	1,627 8
8,750	9,000	637 8	42,000	44,000	1,657 8
9,000	9 250	652 8	44,000	46,000	1,687 8
9,250	9,500	667 8	46,000	48,000	1,717 8
9,500	9,750	682 8	48,000	50,000	1,747 8
9 750	10,000	697 8	50,000	55,000	1,785 0
10,000	10,500	720 0	55,000	60,000	1,822 8
10,500	11,000	742 8	60,000	65,000	1,860 0
11,000	11,500	765 0	65,000	70,000	1,897 8
11,500	12,000	787 8	70,000	75,000	1,935 0
12,000	12,500	810 0	75,000	80,000	1,972 8
12,500	13,000	832 8	80,000	85,000	2,010 0
13,000	13,500	855 0	85,000	90,000	2,047 8
13,500	14,000	877 8	90,000	95,000	2,085 0
14,000	14,500	900 0	95,000	1,00,000	2,122 8
14,500	15,000	922 8	1,00,000	1,05,000	2,160 0
15,000	15,500	945 0	1,05,000	1,10,000	2,197 8
15,500	16,000	967 8	1,10,000	1,15,000	2,235 0
16,000	16,500	990 0	1,15,000	1,20,000	2,272 8
16,500	17,000	1,012 8	1,20,000	1,25,000	2,310 0
17,000	17,500	1,035 0	1,25,000	1,30,000	2,347 8
17,500	18,000	1,057 8	1,30,000	1,35,000	2,385 0
18,000	18,500	1 080 0	1,35,000	1,40,000	2,422 8
18,500	19,000	1,102 8	1,40,000	1,45,000	2,460 0
19,000	19,500	1,125 0	1,45,000	1,50,000	2 497 8
19,500	20,000	1,147 8	1,50,000	1,55,000	2,535 0
20,000	21,000	1,177 8	1,55,000	1,60 000	2,572 8
21,000	22,000	1,207 8	1,60 000	1 65 000	2,610 0
22,000	23,000	1,237 8	1 65,000	1,70 000	2 647 8
23,000	24,000	1,267 8	1,70 000	1 75 000	2 685 0
24,000	25,000	1 297 8	1,75 000	1,80 000	2,722 8
25,000	26,000	1,327 8	1 80 000	1,85 000	2,760 0
26,000	27,000	1,357 8	1,85 000	1,90,000	2,797 8
27,000	28,000	1,387 8	1,90,000	1 95,000	2,835 0
28,000	29,000	1,417 8	1,95 000	2,00 000	2,872 8
29,000	30 000	1,447 8	2 00,000	2,05,000	2,910 0
30,000	32,000	1,477 8			

and the fee increases at the rate of thirty-seven rupees eight annas for every five thousand rupees or part thereof, for example, when the amount or value of the subject matter exceeds.

3,00,000	3,660
4,00,000	4,410
5,00,000	5,160
6,00,000	5,910
7,00,000	6,660
8,00,000	7,410
9,00,000	8,160
10 00,000	8,910
11,00,000	9,660

SCHEDULE C.

[*See* section 12 (4) of the Bihar and Orissa Court Fees (Amendment) Act, 1922.]

	Proper fees set out in Sch. I of the principal Act	Proper fees to be substituted
Article 1	One anna	Two annas.
	Eight annas	Twelve annas.
	One rupee	One rupee and eight annas
	Two rupees	Three rupees
Article 1A	Twelve annas in addition to any fee levied on the application under clause (*a*), clause (*b*) or clause (*d*) of Article 1 of this Schedule.	One rupee in addition to any fee levied on the application under clause (*a*), clause (*b*) or clause (*d*) of Article 1 of this Schedule.
Article 10	Eight annas	One rupee.
	One rupee	Two rupees.
	Two rupees	Three rupees.
Article 12	Eight annas	One rupee.
	Two rupees	Four rupees
Article 12	Five rupees	Ten rupees.
Article 14	Five rupees	Ten rupees.
Articles 17, 18 and 19	Ten rupees	Fifteen rupees
Articles 20 and 21	Twenty rupees	Thirty rupees.

D

BOMBAY ACT No. III OF 1926.

(First published, after having received the assent of the Governor General, in the "Bombay Government Gazette" on the 31st March, 1926.)

AN ACT FURTHER TO AMEND THE COURT-FEES ACT, 1870.

Whereas it is expedient to provide for increased revenues for Government by further amending the Court-fees Act, 1870, in its application to the Presidency of Bombay in manner hereinafter appearing, It is hereby enacted as follows:—

Short title, extent, commencement and duration

1. (*1*) This Act may be called the Court-fees (Bombay Amendment) Act, 1926.

(*2*) It extends to the whole of the presidency of Bombay.

(*3*) It shall come into force on the 1st day of April 1926 and shall remain in operation for two years.

Amendment of section 7 of Act VII of 1870

2. In Section 7 of the Court-fees Act, 1870, hereinafter called "the said Act,"

(*a*) to clause (*d*) of paragraph iv the words "or other consequential relief" shall be added;

(*b*) in clauses (1), (2) and (3) of the proviso to paragraph v for the words "five" "ten" and "ten" the words "seven and a half," "fifteen" and "fifteen" shall, respectively, be substituted.

Amendment of Schedule I to Act VII of 1870

3. For articles 1, 8, 11, 12 and 12-A of, and the Table of rates of *ad valorem* fees in Schedule I to the said Act the following shall be substituted, namely:—

SCHEDULE I.

Ad Valorem Fees.

Number	——	Proper fee.
1 *Plaint*, written statement pleading *a set off or* counter claim or memorandum of appeal (not otherwise provided for in this Act), or of cross-objection, presented to any Civil or Revenue Court except those mentioned in section 3	When the amount or value of the subject matter in dispute does not exceed five rupees	Six annas.
	When such amount or value exceeds five rupees, for every five rupees, or part thereof, in excess of five rupees, up to one hundred rupees	Six annas
	When such amount or value exceeds one hundred rupees, for every ten rupees, or part thereof, in excess of one hundred rupees, up to one thousand rupees	Twelve annas.
	When such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees, up to five thousand rupees	Five rupees
	When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees, or part thereof in excess of five thousand rupees, up to ten thousand rupees.	Twelve rupees and eight annas.
	When such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees	Twenty-two rupees and eight annas
	When such amount or value exceeds twenty thousand rupees, for every one thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees	Thirty rupees
	When such amount or value exceeds thirty thousand rupees, for every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees.	Thirty rupees

Ad Valorem Fees.

Number	—	Proper fee
	When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees	Thirty rupees
	Provided that the maximum fee leviable on a plaint or memorandum of appeal shall be ten thousand rupees	
8 Copy of any document liable *to stamp-duty* under the Indian Stamp Act, 1899, when left by any party to a suit or proceeding in place of the original withdrawn	(*a*) When the stamp-duty chargeable on the original *does not exceed one* rupee.	The amount of the duty chargeable on the original
	(*b*) In any other case	One rupee
11 Probate of a will or letters of administration with or without will annexed	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one thousand rupees, on the part of the amount or value in excess of one thousand rupees, up to ten thousand rupees	Two per centum
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds ten thousand rupees, on the part of the amount or value in excess of ten thousand rupees, up to fifty thousand rupees	Three per centum
	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds fifty thousand rupees, on the part of the amount or value in excess of fifty thousand rupees, up to one lakh of rupees	Four per centum

Ad Valorem Fees—Contd.

Number.	—	Proper fee.
11 Probate, etc — *Contd*	When the amount or value of the property in respect of which the grant of probate or letters is made exceeds one lakh of rupees, on the part of the amount or value in excess of one lakh of rupees. Provided that when, after the grant of a certificate under the Indian Succession Act, 1925, or under Bombay Regulation VIII of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of the same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant	Five per centum
12. Certificate under the Indian Succession Act, 1925.		The fee leviable in the case of a probate (article 11) on the amount or value of any debt or security specified in the certificate under section 374 of the Act, and one and a half times this fee on the amount or value of any debt or security to which the certificate is extended under section 376 of the Act *Note*—(*1*) The amount of a debt is its amount, including interest on the day on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained.

Ad Valorem Fees.—Contd

Number.	—	Proper fee
12. Certificate.—*Contd.*		(2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act, and where such a power has been so conferred, whether the power is for the receiving of interest or dividends on, or for the negotiation or transfer of the security or for both purposes the value of the security is its market value on the day on which the inclusion of the security in the certificate is applied for, so far as such value can be ascertained
12-A. Certificate under Bombay Regulation VIII of 1827		The fee leviable in the case of a probate (article 11) on the amount or value of the property in respect of which the certificate is granted.

Table of Rates of 'ad valorem' fees leviable on the institution of suits.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper fee.	When the amount or value of the subject-matter exceeds.	But does not exceed	Proper fee.
Rs	Rs.	Rs. A	Rs.	Rs.	Rs. A.
.	5	0 6	360	370	27 12
5	10	0 12	370	380	28 8
10	15	1 2	380	390	29 4
15	20	1 8	390	400	30 0
20	25	1 14	400	410	30 12
25	30	2 4	410	420	31 8
30	35	2 10	420	430	32 4
35	40	3 0	430	440	33 0
40	45	3 6	440	450	33 12
45	50	3 12	450	460	34 8
50	55	4 2	460	470	35 4
55	60	4 8	470	480	36 0
60	65	4 14	480	490	36 12
65	70	5 4	490	500	37 8
70	75	5 10	500	510	38 4
75	80	6 0	510	520	39 0
80	85	6 6	520	530	39 12
85	90	6 12	530	540	40 8
90	95	7 2	540	550	41 4
95	100	7 8	550	560	42 0
100	110	8 4	560	570	42 12
110	120	9 0	570	580	43 8
120	130	9 12	580	590	44 4
130	140	10 8	590	600	45 0
140	150	11 4	600	610	45 12
150	160	12 0	610	620	46 8
160	170	12 12	620	630	47 4
170	180	13 8	630	640	48 0
180	190	14 4	640	650	48 12
190	200	15 0	650	660	49 8
200	210	15 12	660	670	50 4
210	220	16 8	670	680	51 0
220	230	17 4	680	690	51 12
230	240	18 0	690	700	52 8
240	250	18 12	700	710	53 4
250	260	19 8	710	720	54 0
260	270	20 4	720	730	54 12
270	280	21 0	730	740	55 8
280	290	21 12	740	750	56 4
290	300	22 8	750	760	57 0
300	310	23 4	760	770	57 12
310	320	24 0	770	780	58 8
320	330	24 12	780	790	59 4
330	340	25 8	790	800	60 0
340	350	26 4	800	810	60 12
350	360	27 0	810	820	61 8

Table of Rates of 'ad valorem' fees leviable on the institution of suits.

When the amount or value of the subject-matter exceeds.	But does not exceed	Proper fee	When the amount or value of the subject-matter exceeds	But does not exceed.	Proper fee.
Rs.	Rs.	Rs A.	Rs.	Rs.	Rs. A.
820	830	62 4	3,800	3,900	220 0
830	840	63 0	3,900	4,000	225 0
840	850	63 12	4,000	4,100	230 0
850	860	64 8	4,100	4,200	235 0
860	870	65 4	4,200	4,300	240 0
870	880	66 0	4,300	4,400	245 0
880	890	66 12	4,400	4,500	250 0
890	900	67 8	4,500	4,600	255 0
900	910	68 4	4,600	4,700	260 0
910	920	69 0	4,700	4,800	265 0
920	930	69 12	4,800	4,900	270 0
930	940	70 8	4,900	5,000	275 0
940	950	71 4	5,000	5,250	287 8
950	960	72 0	5,250	5,500	300 0
960	970	72 12	5,500	5,750	312 8
970	980	73 8	5,750	6,000	325 0
980	990	74 4	6,000	6,250	337 8
990	1,000	75 0	6,250	6,500	350 0
1,000	1,100	80 0	6,500	6,750	362 8
1,100	1,200	85 0	6,750	7,000	375 0
1,200	1,300	90 0	7,000	7,250	387 8
1,300	1,400	95 0	7,250	7,500	400 0
1,400	1,500	100 0	7,500	7,750	412 8
1,500	1,600	105 0	7,750	8,000	425 0
1,600	1,700	110 0	8,000	8,250	437 8
1,700	1,800	115 0	8,250	8,500	450 0
1,800	1,900	120 0	8,500	8,750	462 8
1,900	2,000	125 0	8,750	9,000	475 0
2,000	2,100	130 0	9,000	9,250	487 8
2,100	2,200	135 0	9 250	9 500	500 0
2,200	2,300	140 0	9,500	9,750	512 8
2,300	2,400	145 0	9,750	10,000	525 0
2,400	2,500	150 0	10 000	10,500	547 8
2,500	2,600	155 0	10,500	11,000	570 0
2,600	2,700	160 0	11,000	11,500	592 8
2,700	2,800	165 0	11 500	12,000	615 0
2,800	2,900	170 0	12 000	12,500	637 8
2,900	3,000	175 0	12 500	13,000	660 0
3,000	3,100	180 0	13 000	13,500	682 8
3,100	3,200	185 0	13 500	14,000	705 0
3,200	3 300	190 0	14 000	14,500	727 8
3,300	3,400	195 0	14 500	15,000	750 0
3,400	3,500	200 0	15,000	15,500	772 8
3,500	3 600	205 0	15,500	16,000	795 0
3,600	3 700	210 0	16 000	16 500	817 8
3,700	3,800	215 0	16 500	17,000	840 0

Table of Rates of 'ad valorem' fees leviable on the institution of suits.

When the amount or value of the subject-matter exceeds.	But does not exceed	Proper fee.		When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fee.	
Rs.	Rs.	Rs.	A.	Rs.	Rs.	Rs	A
17,000	17,500	862	8	27,000	28,000	1,215	0
17,500	18,000	885	0	28,000	29,000	1,245	0
18,000	18,500	907	8	29,000	30,000	1,275	0
18,500	19,000	930	0	30,000	32,000	1,305	0
19,000	19,500	952	8	32,000	34,000	1,335	0
19,500	20,000	975	0	34,000	36,000	1,365	0
20,000	21,000	1,005	0	36,000	38,000	1,395	0
21,000	22,000	1,035	0	38,000	40,000	1,425	0
22,000	23,000	1,065	0	40,000	42,000	1,455	0
23,000	24,000	1,095	0	42,000	44,000	1,485	0
24,000	25,000	1,125	0	44,000	46,000	1,515	0
25,000	26,000	1,155	0	46,000	48,000	1,545	0
26,000	27,000	1,185	0	48,000	50,000	1,575	0

and the fee increases at the rate of thirty rupees for every five thousand rupees, or part thereof, up to a maximum of ten thousand rupees, for example—

Rs.	Rs.	A.
1,00,000	1,875	0
2,00,000	2,475	0
3,00,000	3,075	0
4,00,000	3,675	0
5,00,000	4,275	0
6,00,000	4,875	0
7,00,000	5,475	0
8,00,000	6,075	0
9,00,000	6,675	0
10,00,000	7,275	0
11,00,000	7,875	0
12,00,000	8,475	0
13,00,000	9,075	0
14,00,000	9 675	0
15,00,000	10,000	0

Amendment of Schedule II to VII of 1870.

4. For Articles 1, 6, 7, 12, 14, 17, 18, 19, 20 and 21 of Schedule II to the said Act the following shall be substituted, namely:—

SCHEDULE II.

Fixed Fees.

Number.	—	Proper fee.
1. Application or petition.	(a) When presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government, and when the subject-matter of such application relates exclusively to those dealings or when presented to any officer of land-revenue by any person holding temporarily settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement. or when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the application or petition relates solely to such conservancy or improvement or when presented to any Civil Court other than a principal Civil Court of original jurisdiction, or to any Court of Small Causes constituted under the Provincial Small Causes Courts Act, 1887, or to a Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees or when presented to any Civil, Criminal or Revenue Court, or, to any Board or executive officer for the purpose of obtaining a copy or translation of any judgment, decree or order passed by such Court, Board or officer, or of any other document on record in such Court or office	Two annas.

Fixed Fees.—Contd.

Number.	——	Proper fee
	(*b*) When containing a complaint or charge of any offence other than an offence for which police officers may, under the Criminal Procedure Code, 1898, arrest without warrant, and presented to any Criminal Court :	*Eight* annas
	or when presented to a Civil Criminal or Revenue Court, or to a Collector, or any Revenue-officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity and not otherwise provided for by this Act :	
	or to deposit in Court revenue or rent .	
	or for determination by a Court of the amount of compensation to be paid by a landlord to his tenant.	
	(*c*) *When presented to a Chief* Commissioner or other Chief Controlling Revenue or Executive Authority, or to a Commissioner of Revenue or Circuit, or to any chief officer charged with the executive administration of a division and not otherwise provided for by this Act.	Two rupees.
	(*d*) When presented to a High Court.	Three rupees.
6. Bail-bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure, 1898, or the Code or Civil Procedure, 1908, and not otherwise provided for by this Act.	......	One rupee.
7. Undertaking under section 49 of the Indian Divorce Act, 1869		One rupee.

Fixed Fees.—Contd.

Number.	——	Proper fee
12. Caveat	When the amount or value of the property involved does not exceed two thousand rupees	Five rupees
	When the amount or value of the property involved exceeds two thousand rupees	Ten rupees.
14 Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866	......	Ten rupees
17. Plaint or memorandum of appeal in each of the following suits :—		Fifteen rupees
(i) to alter or set aside a summary decision or order of any of the Civil Courts not established by Letters Patent or of any Revenue Court,	When the amount or value of the property does not exceed five hundred rupees	Ten rupees
	When the amount or value of the property exceeds five hundred rupees	Fifteen rupees
(ii) to alter or cancel any entry in a register of the names of proprietors of revenue paying estates, and		
(iii) to obtain a declaratory decree or order, where no consequential relief is prayed,	......	Fifteen rupees
(iv) to set aside alienation,	......	Fifteen rupees
(v) to set aside a decree or award,	When the amount or value of the property does not exceed five hundred rupees	Ten rupees.
	When the amount or value of the property exceeds five hundred rupees	Fifteen rupees
(vi) to set aside an adoption, and		
(vii) any other suit where it is not possible to estimate at a money value the subject matter in dispute, and which is not otherwise provided for by this Act		Fifteen rupees.

Fixed Fees.—Contd.

Number	——	Proper fee
18. Application—		
(*a*) under paragraph 17 of the Second Schedule to the Code of Civil Procedure, 1908,	......	Ten rupees.
(*b*) for probate or letters of administration or for revocation thereof under the Indian Succession Act, 1925	When the amount or value of the Estate does not exceed two thousand rupees	Two rupees
	When it exceeds two thousand rupees, but does not exceed five thousand rupees.	Five rupees
	When it exceeds five thousand rupees.	Ten rupees
(*c*) for a certificate under the Indian Succession Act, 1925, or Bombay Regulation VIII of 1827		
(*d*) for opinion or advice or for discharge from a Trust, or for appointment of new Trustees, under sections 34, 72, 73 or 74 of the Indian Trusts Act, 1882;	......	Ten rupees
(*e*) for the winding up of a Company, under section 166 of the Indian Companies Act, 1913;	......	Ten rupees.
(*f*) under rule 58 of Order XXI of the Code of Civil Procedure, 1908, regarding a claim to attached property	When the amount or value of the property exceeds five hundred rupees.	Ten rupees.
19 Agreement in writing stating a question for the opinion of the Court under the Code of Civil Procedure, 1908	......	Twenty rupees
20. Every petition under the Indian Divorce Act, 1869, except petitions under section 44 of that Act and every memorandum of appeal under section 55 of that Act.	......	Thirty rupees
21. Plaint or memorandum of appeal under the Parsi Marriage and Divorce Act, 1865.	......	Thirty rupees

E

THE
CENTRAL PROVINCES COURT-FEES ACT, 1922.

CENTRAL PROVINCES ACT No. I OF 1923.

PUBLISHED IN TH "CENTRAL PROVINCES GAZETTE" OF THE 27TH JANUARY 1923

An Act to amend the Court-fees Act, 1870, with reference to the scale of Court-fees in the Central Provinces.

WHEREAS it is necessary to revise the scale of court-fees for the Central Provinces, by amendment of the Court-fees Act, 1870, in its application to Central Provinces, in the manner hereinafter appearing

It is hereby enacted as follows:—

Short title

Commencement and duration

1. (1) This Act may be called the Central Provinces Court-fees Act, 1923

(2) It shall come into force on such date as the Local Government may, by notification, appoint in this behalf and shall remain in force to the 31st day of March, 1926.

Application of Act.

2. The Court-fees Act, 1870, as amended by subsequent legislation, shall be amended, in its application to the Central Provinces, in the manner hereinafter provided

Amendment of Section 7, paragraph v.

3. (1) In clause (*a*) of paragraph v of Section 7, between the words "or" and "forms part," in line 4, the words "where the land" shall be inserted

(2) In clause (*b*) of the same paragraph, between the words "or" and "forms part," in line 3, the words "where the land" shall be inserted

(3) In clause (*b*) of paragraph v of Section 7 of the said Act, for the word "five" the words "twelve and a half" shall be substituted

Amendment of Section 7, paragraph ix

4. For paragraph ix of Section 7, the following shall be substituted, namely:—

"ix (*a*) In suits against a mortgagee for the recovery of the property mortgaged,—

according to the principal money expressed to be secured by the instrument of mortgage ;

(*b*) in suits by a mortgagee to foreclose the mortgage—according to the amount claimed as due at the date of presenting the plaint."

Amendment of Section 7, paragraph xi

5. In paragraph xi of Section 7 of the said Act, before the words "the amount" the word "twice" shall be inserted.

Amendment of Section 18

6. In Section 18 of the said Act, for the words "a fee of eight annas" the words "a fee of one rupee" shall be substituted.

Amendment of Section 19, paragraph iii, ix and xii

7. (1) From Section 19 of the said Act, paragraphs iii and xii shall be deleted.

(2) In paragraph ix of the said Section, the words "or the ascertainment of rights thereto or interests therein" shall be omitted.

Amendment of Schedule I, Article 1.

8. For the second and third columns of Article 1 in the first schedule to the said Act, the follow- shall be substituted, namely:—

"When the amount or value of the subject-matter in dispute does not exceed Rs. 100	Seven and a half per centum of such amount or value.
When such amount or value exceeds Rs 100, but does not exceed Rs 1,000.	Ten per centum of such amount or value.
When such amount or value exceeds Rs 1,000, but does not exceed Rs. 5,000	Rs. 100 *plus* seven and a half per centum of the amount or value in excess of Rs 1,000.
When such amount or value exceeds Rs 5,000, but does not exceed Rs 10,000.	Rs. 400 *plus* six per centum of the amount or value in excess of Rs 5,000.
When such amount or value exceeds Rs. 10,000, but does not exceed Rs 20,000	Rs 700 *plus* four and a half per centum of the amount or value in excess of Rs. 10,000.
When such amount or value exceeds Rs 20,000, but does not exceed Rs 50,000.	Rs 1,150 *plus* three per centum of the amount or value in excess of Rs 20,000.
When such amount or value exceeds Rs 50,000, but does not exceed Rs 1,00,000	Rs 2,050 *plus* two per centum of the amount or value in excess of Rs 50,000
When such amount or value exceeds Rs. 1,00,000.	Rs 3,050 *plus* one per centum of the amount or value in excess of Rs 1,00,000
Provided that— (*a*) the minimum fee shall be one rupee, (*b*) the maximum fee shall be Rs 5,000; and (*c*) fractions of an anna shall be neglected."	

Amendment of Schedule I, Article 6.

9. In the third column of Article 6 in the first schedule to the said Act,—

(a) for the words "Four annas" opposite clause (a) in the first entry in the second column, the words "Six" annas" shall be substituted ; and

(b) for the words "Eight annas" opposite clause (b) in the first entry in the second column, the words "Twelve annas" shall be substituted

Amendment of Schedule I, Article 11

10. For the entries above the proviso in the second column and for the entries in the third column in Article 11 in the first schedule to the said Act, the following shall be substituted, namely.—

"When the amount or value of the property in respect of which the grant of probate or, letters is made exceeds Rs 1,000, but does not exceed Rs 5,000	Two per centum of such amount or value
When such amount or value exceeds Rs 5,000, but does not exceeds Rs 10,000	Rs 100 *plus* two and a half per centum of the amount or value in excess of Rs 5,000
When such amount or value exceed Rs. 10,000	Rs 250 *plus* three per centum of the amount or value in excess of Rs 10,000"

Amendment of Schedule I, Article 12

11. For the entry in the second column of Article 12 in the first schedule to the said Act, and for the first paragraph in the third column of the said Article the following shall be substituted namely.—

"When the amount or value of any debt or security specified in the certificate under Section 8 of the Act exceeds Rs 1,000, but does not exceed Rs 5,000	Two per centum of such amount or value, and three per centum of the amount or value of any debt or security to which the certificate is extended under Section 10 of the Act
When such amount or value exceeds Rs 5,000, but does not exceed Rs 10,000	Rs 100 *plus* two and a half per centum of the amount or value in excess of Rs 5,000, and four and a half per centum of the amount or value of any debt or security to which the certificate is extended under Section 10 of the Act
When such amount or value exceeds Rs 10,000	Rs 250 *plus* three per centum of the amount or value in excess of Rs 10,000 and seven and a half per centum of the amount or value of any debt or security to which the certificate is extended under Section 10 of the Act."

Delegation of table of rates.

12. The table of rates of *ad valorem* fees leviable on the institution of suits, at the end of the first schedule to the said Act, shall be deleted.

Amendment of Schedule II, Article 1, clauses (*a*) and (*b*)

13. In the third column in Article 1 in the second schedule to the said Act,—

(*1*) for the words "One anna" opposite clause (*a*) in the second column, the words "Two annas" shall be substituted ; and

(*2*) for the words "Eight annas" opposite clause (*b*) in the second column, the following shall be substituted namely.—

"In the case of a criminal complaint,, one rupee, and in other cases, twelve annas."

Amendment of Schedule II, Article 1, clauses (*c*) and (*d*)

14. For clauses (*c*) and (*d*) in the second column of Article 1 in the second schedule to the said Act, and for the entries opposite these clauses in the third column, the following shall be substituted, namely :—

"(*c*) When presented to a Commissioner of Revenue or to any chief officer charged with the executive administration of a Division, and not otherwise provided for by this Act.	Two rupees.
(*d*) When presented to a Chief Controlling Revenue Authority or Executive Authority and not otherwise provided for by this Act.	Four rupees.
(*e*) When presented to the Court of the Judicial Commissioner—	
(*i*) otherwise than under Section 25 of the Provincial Small Causes Courts Act, 1887, or Section 115 of the Code of Civil Procedure, 1908;	Two rupees.
(*ii*) under Section 25 of the Provincial Small Causes Courts Act, 1887;	Three rupees.
(*iii*) under Section 115 of the Code of Civil Procedure, 1908, and	
the value of the suit to which the order or decree relates does not exceed Rs 1,000,	Five rupees.
the value of the suit exceeds Rs 1,000.	Ten rupees."

Amendment of Schedule II, Article 10.

15. In the third column in Article 10 in the second schedule to the said Act, for the words "One rupee" opposite clause (*b*) in the second column, the words "One rupee eight annas" shall be substituted.

Amendment of Schedule II, Article 11

16. In the third column in Article 11 in the second schedule to the said Act,—

(*1*) for the words "Eight annas" opposite clause (*a*) in the second column, the words "Two rupees" shall be substituted ; and

(*2*) for the words "Two rupees" opposite clause (*b*) in the second column, the words "Four rupees" shall be substituted

Amendment of Schedule II, Article 17

17. (1) The words "Ten rupees" in the third column opposite Article 17 in the second schedule to the said Act, and the bracket opposite that Article in the second column, shall be omitted.

(*1*) In the third column, opposite the said Article—

(*a*) opposite entries (i), (ii), (iii), (iv), (vi), the words "Fifteen rupees" shall be inserted ; and

(*b*) opposite entry (v), the words "Twenty rupees" shall be inserted

Fees on application for imperfect partition of mahal

18. After Article 21 in the second schedule to the said Act, the following Article shall be inserted, namely —

"22 Application for imperfect partition of a mahal under Section 164 of the Central Provinces Land Revenue Act, 1917	Five rupees"

Saving of certain probates, letters of administration and certificate

19. Nothing in this Act shall apply to any probate, letters of administration or certificate in respect of which the fee payable under the law for the time being in force has been paid prior to the commencement of this Act but which have not been issued.

F

MADRAS ACT No. V OF 1922.

PASSED BY THE GOVERNOR OF FORT ST. GEORGE IN COUNCIL.

[Received the assent of the Governor on the 30th March, 1922 and that of the Governor-General on the 17th April, 1922.]

An Act to amend the Court Fees Act, 1870.

Whereas it is expedient to amend the Court Fees Act, 1870, in its application to the Presidency of Madras; it is hereby enacted as follows.—

Short title and application.

1. (a) This Act may be called the Madras Court Fees (Amendment) Act, 1922.

(b) It extends to the whole of the Presidency of Madras.

Interpretation clause.

2. (1) In this Act 'the principal Act' shall mean 'the Court Fees Act, 1870.'

(2) In this Act and in the principal Act, unless there is anything repugnant in the subject or context, 'Memorandum of appeal, shall include memorandum of cross objection

Amendment of section 5 of the Principal Act

3. In the second paragraph of section 5 of the principal Act, the words 'Registrar'' and 'Chief Judge' shall be substituted for 'clerk of the court' and the 'first Judge' respectively.

Amendment of section 7.

4. In section 7 of the principal Act the words "except suits for relief under section 14 of the Religious Endowments Act, 1863, or under section 91 or section 92 of the Code of the Civil Procedure, 1908," shall be added between the words 'mentioned' and 'shall.'

Amendment of section 7 (ii).

5. In section 7 (ii) of the principal Act, after the words 'shall be deemed to be' the words 'in suits for maintenance, the amount claimed to be payable for one year and in other suits' shall be added.

Addition of a proviso to section 1 (iv).

6. The following shall be added after the words 'Memorandum of appeal' in section 7, paragraph iv, of the principal Act:—

'Provided that in suits coming under sub-clause (c), in

cases where the relief sought is with reference to any immoveable property, such valuation shall not be less than half the value of the immoveable property calculated in the manner provided for by paragraph (v) of this section.'

Addition to section 7.

7. In section 7 of the principal Act between paragraph iv and v the following paragraph shall be added as iv (*a*):—

"In a suit for cancellation of a decree for money or other property having a money value, or other document securing money or other property having such value,

according to the value of the subject-matter of the suit, and such value shall be deemed to be—

if the whole decree or other document is sought to be cancelled, the amount or the value of the property for which the decree was passed or the other document executed,

if a part of the decree or other document is sought to be cancelled, such part of the amount or value of the property.'

Amendment of section 7 (v).

8. In section 7 (v) of the principal Act—

in (*a*) for the word 'ten' the word 'twenty' shall be substituted ,

in (*b*) for the word 'five' the word 'ten' shall be substituted ;

and after clause (*d*) the following proviso shall be substituted for the existing proviso

'Provided that if rules are framed under section 3 of the Suits Valuation Act, 1887 for determining the value of land for the purposes of jurisdiction, the value so determined shall be deemed to be the value of the land for the purposes of this paragraph '

Amendment of section 11

9. For the second paragraph of Section 11 of the principal Act, the following paragraphs shall be substituted :—

'Where a decree directs an inquiry as to mesne profits which have accrued on the property during a period prior to the institution of the suit, if the profits ascertained on such inquiry exceed the profits claimed, no final decree shall be passed till the difference between the fee actually paid and the fee which would have been payable had the suit comprised the whole of the profits so ascertained is paid If the additional fee is not paid within such time as the court shall fix, the claim for the excess shall be dismissed, unless the court, for sufficient cause, extends the time for payment

'Where a decree directs an inquiry as to mesne profits from the institution of the suit, and a final decree is passed in accord

ance with the result of such inquiry, the decree shall not be executed until such fee is paid as would have been payable on the amount claimed in execution if a separate suit had been instituted therefor.'

Amendment of section 18.

10. In Section 18 of the principal Act, for the words 'eight annas' the words 'one rupee' shall be substituted.

Amendment of schedules I and II

11. For Schedules I and II of the principal Act, the following schedules shall be substituted:—

SCHEDULE I.

Ad Valorem Fees.

Number.		Proper fee.
1. *Plaint, or written statement pleading a set off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) presented to any Civil or Revenue Court except those mentioned in section 3.	When the amount or value of the subject-matter in dispute does not exceed five rupees	Eight annas
	When such amount or value exceeds five rupees, for every five rupees or part thereof, in excess of five rupees, up to one hundred rupees.	Nine annas.
	When such amount or value exceeds one hundred rupees for every ten rupees, or part thereof, in excess of one hundred rupees, up to one thousand rupees.	One rupee two annas
	When such amount or value exceeds one thousand rupees, for every one hundred rupees, or part thereof, in excess of one thousand rupees, up to five thousand rupees.	Seven rupees eight annas.

Ad Valorem Fees—Contd.

Number.		Proper fee.
	When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees, or part thereof, in excess of five thousand rupees, up to ten thousand rupees	Fifteen rupees
	When such amount or value exceeds ten thousand rupees, for every five hundred rupees, or part thereof, in excess of ten thousand rupees, up to twenty thousand rupees	Twenty-two rupees eight annas
	When such amount or value exceeds twenty thousand rupees, for every thousand rupees, or part thereof, in excess of twenty thousand rupees, up to thirty thousand rupees.	Thirty rupees.
	When such amount or value exceeds thirty thousand rupees, for every two thousand rupees, or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees	Do
	When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees	Do

Ad Valorem Fees—Contd.

Number.		Proper fee
2. *Plaint, or written statement pleading a set off or counter-claim, presented to a court outside the Presidency Town in any suit of the nature cognizable by Court of Small Causes, when the amount or value of the subject-matter does not exceed Rs. 500.	When the amount or value of the sub-ject-matter in dispute does not exceed five rupees.	Six annas.
	When such amount or value exceeds five rupees, for every five rupees or part there-of in excess of five rupees up to one hun-dred rupees	Do.
	When such amount or value exceeds one hundred rupees for every ten rupees or part thereof in ex-cess of one hundred rupees up to five hundred rupees	Twelve annas.
3. Plaint in a suit for possession under (the Specific Relief Act, 1877, section 9)		An amount of one-half the scale of fee pres-cribed in article 1 above.
4. Application for re-view of judgment, if presented on or after the ninetieth day from the date of the decree.		The fee leviable on the plaint or memoran-dum of appeal.
5. Application for re-view of judgment, if presented before the ninetieth day from the date of the de-cree.		One-half of the fee levi-able on the plaint or memorandum of ap-peal.
6. Copy or translation of an order not being or having the force of a decree.	When such judgment or order is passed by any Civil Court other than a High Court, or by the presiding officer of any Revenue Court or Office or by any	

Ad Valorem Fees—Contd

Number		Proper fee.
6. Copy or translation of order not being or having the force of a decree	other Judicial or Executive Authority—	
	(a) If the amount or value of the subject-matter is fifty or less than fifty rupees	Six annas.
	(b) If such amount or value exceeds fifty rupees	Twelve annas
	When such judgment or order is passed by a High Court	One rupee eight annas.
6-A Copy or translation of a judgment or order of a Criminal Court.		Eight annas
7 Copy of a decree or order having the force of a decree	When such decree or order is made by any Civil Court other than a High Court, or by any Revenue Court—	
	(a) If the amount or value of the subject-matter of the suit wherein such decree or order is less than fifty rupees	Eight annas
	(b) If such amount or value exceeds fifty rupees	One rupee
	When such decree or order is made by a High Court	Four rupees
8 Copy of any document liable to stamp-duty under the Indian Stamp Act, 1899, when left by any party to a suit or proceeding in place of the original withdrawn	(a) When the stamp-duty chargeable on the original does not exceed eight annas	The amount of the duty chargeable on the *original*.
	(b) In any other case.	Eight annas.

Ad Valorem Fees—Contd.

Number.		Proper fee.
9. Copy of any revenue or judicial proceeding or order not otherwise provided for by this Act, or copy of any account, statement report or the like, taken out of any Civil or Criminal or Revenue Court or Office, or from the office of any chief officer charged with the executive administration of a division	For every three hundred and sixty words or fraction of three hundred and sixty words.	Eight annas.
10 [*Repeal by the Guardians and Wards Act, 1890 (VIII of 1890).*]		
11 Probate of a will or letters of administration with or without will annexed		Two per centum on such amount or value
	When the amount or value exceeds five thousand rupees	Three per centum on such amount or value
	Provided that when, after the grant of a certificate under the Succession Certificate Act, 1889, or under the Regulation of the Bombay Code, No. VIII of 1827, in respect of any property included in an estate, a grant of probate or letters of administration is made in respect of same estate, the fee payable in respect of the latter grant shall be reduced by the amount of the fee paid in respect of the former grant.	

Ad Valorem Fees—Contd.

Number		Proper fee.
12 Certificate under the Succession Certificate Act, 1889	When the amount or value of any debt or security specified in the certificate under section 8 of the Act does not exceed five thousand rupees.	Two per centum on such amount or value, and three per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act
	When such amount or value exceeds five thousand rupees	Three per centum on such amount or value, and four and a half per centum on the amount or value of any debt or security to which the certificate is extended under section 10 of the Act.
		Note—(1) The amount of a debt is its amount, including interest, on which the inclusion of the debt in the certificate is applied for, so far as such amount can be ascertained (2) Whether or not any power with respect to a security specified in a certificate has been conferred under the Act, and where such a power has been so conferred, whether the power, is for the receiving of interest or dividends on, or for the negotiation or transfer of the security, or for both purposes, the value of the security is its market-value on the day on which the inclusion of the security in certificate is ap for, value certained.

Table of Rates of 'ad valorem' fees leviable on the institution of suits.

(As amendmend by the Madras Act, V of 1922).

When the amount or value of the subject-matter exceeds.	But does not exceed.	Proper fee.	When the amount or value of the subject-matter exceeds	But does not exceed.	Proper fee
Rs	Rs.	Rs. A.	Rs.	Rs	Rs. A.
...	5	0 8	320	330	37 1
5	10	1 1	330	340	38 3
10	15	1 10	340	350	39 5
15	20	2 3	350	360	40 7
20	25	2 12	360	370	41 9
25	30	3 5	370	380	42 11
30	35	3 14	380	390	43 13
35	40	4 7	390	400	44 15
40	45	5 0	400	410	46 1
45	50	5 9	410	420	47 3
50	55	6 2	420	430	48 5
55	60	6 11	430	440	49 7
60	65	7 4	440	450	50 9
65	70	7 13	450	460	51 11
70	75	8 6	460	470	52 13
75	80	8 15	470	480	53 15
80	85	9 8	480	490	55 1
85	90	10 1	490	500	56 3
90	95	10 10	500	510	57 5
95	100	11 3	510	520	58 7
100	110	12 5	520	530	59 9
110	120	13 7	530	540	60 11
120	130	14 9	540	550	61 13
130	140	15 11	550	560	62 15
140	150	16 13	560	570	64 1
150	160	17 15	570	580	65 3
160	170	19 1	580	590	66 5
170	180	20 3	590	600	67 7
180	190	21 5	600	610	68 9
190	200	22 7	610	620	69 11
200	210	23 9	620	630	70 13
210	220	24 11	630	640	71 15
220	230	25 13	640	650	73 1
230	240	26 15	650	660	74 3
240	250	28 1	660	670	75 5
250	260	29 3	670	680	76 7
260	270	30 5	680	690	77 9
270	280	31 7	690	700	78 11
280	290	32 9	700	710	79 13
290	300	33 11	710	720	80 15
300	310	34 13	720	730	82 1
310	320	35 15	730	740	83 3

Table of Rates of 'ad valorem' fees leviable on the institution of suits

When the amount or value of the subject-matter exceeds	But does not exceed	Proper fee	When the amount or value of the subject-matter exceeds	But does not exceed	Proper fee.
Rs	Rs	Rs A	Rs	Rs	Rs A.
740	750	84 5	2,800	2,900	254 15
750	760	85 7	2,900	3,000	262 7
760	770	86 9	3,000	3,100	269 15
770	[illegible]	87 11	3,100	3,200	277 7
780	790	88 13	3,200	3,300	284 15
790	800	89 15	3,300	3,400	292 7
800	810	91 1	3,400	3,500	299 15
810	820	92 3	3,500	3,600	307 7
820	830	93 5	3,600	3,700	314 15
830	840	94 7	3,700	3,800	322 7
840	850	95 9	3,800	3,900	329 15
850	860	96 11	3,900	4,000	337 7
860	870	97 13	4,000	4,100	344 15
870	880	98 15	4,100	4,200	352 7
880	890	100 1	4,200	4,300	359 15
890	900	101 3	4,300	4,400	367 7
900	910	102 5	4,400	4,500	374 15
910	920	103 7	4,500	4,600	382 7
920	930	104 9	4,600	4 700	389 15
930	940	105 11	4,700	4,800	397 7
940	950	106 13	4,800	4,900	404 15
950	960	107 15	4,900	5,000	412 7
960	970	109 1	5,000	5,250	427 7
970	980	110 3	5,250	5,500	442 7
980	990	111 5	5,500	5,750	457 7
990	1,000	112 7	5,750	6,000	472 7
1,000	1,100	119 15	6,000	6,250	487 7
1,100	1,200	127 7	6,250	6,500	502 7
1,200	1,300	134 15	6,500	6,750	517 7
1,300	1,400	142 7	6,750	7,000	532 7
1,400	1,500	149 15	7,000	7,250	547 7
1,500	1,600	157 7	7,250	7,500	562 7
1,600	1,700	164 15	7,500	7,750	577 7
1,700	1,800	172 7	7,750	8,000	592 7
1,800	1,900	179 15	8,000	8,250	607 7
1,900	2,000	187 7	8,250	8,500	622 7
2 000	2,100	194 15	8 500	8 750	637 7
2,100	2,200	202 7	8,750	9,000	652 7
2,200	2,300	209 15	9 000	9,250	667 7
2,300	2,400	217 7	9,250	9,500	682 7
2,400	2,500	224 15	9,500	9,750	697 7
2,500	2,600	232 7	9 750	10,000	712 7
2 600	2,700	239 15	10 000	10,500	734 15
2,700	2,800	247 7	10,500	11,000	757 7

Table of rates of 'ad valorem' fees leviable on the institution of suits.

When the amount or value of the subject-matter exceeds.	But does not exceed	Proper fee.	When the amount or value of the subject-matter exceeds	But does not exceed.	Proper fee.
Rs	Rs	Rs A	Rs.	Rs.	Rs A.
11,000	11,500	779 15	21,000	22,000	1,222 7
11,500	12,000	802 7	22,000	23,000	1,252 7
12,000	12,500	824 15	23,000	24,000	1,282 7
12,500	13,000	847 7	24,000	25,000	1,312 7
13,000	13,500	869 15	25,000	26,000	1,342 7
13,500	14,000	892 7	26,000	27,000	1,372 7
14 000	14,500	914 15	27,000	28,000	1,402 7
14,500	15,000	937 7	28,000	29,000	1,432 7
15,000	15,500	959 15	29,000	30,000	1,462 7
15,500	16,000	982 7	30,000	32 000	1,492 7
16,000	16,500	1,004 15	32 000	34,000	1,522 7
16,500	17,000	1,027 7	34 000	36,000	1,552 7
17,000	17,500	1,049 15	36,000	38,000	1,582 7
17,500	18,000	1,072 7	38,000	40,000	1,612 7
18,000	18,500	1,094 15	40,000	42,000	1,642 7
18,500	19,000	1,117 7	42 000	44,000	1,672 7
19,000	19,500	1,139 15	44,000	46,000	1,702 7
19,500	20 000	1,162 7	46 000	48,000	1,732 7
20 000	21 000	1,192 7	48,000	50,000	1,762 7

When the amount or value of the subject-matter exceeds Rs. 50,000 for every five thousand rupees or part thereof in excess of fifty thousand rupees,—thirty rupees.

TABLE OF RATES OF *AD VALOREM* FEES LEVIABLE.

(b) on plaints, etc., mentioned in Article 2 of this Schedule.
Fixed Fees.

When the amount or value of the subject-matter exceeds	But does not exceed	Proper fee	When the amount or value of the subject-matter exceeds	But does not exceed	Proper fee
Rs	Rs	Rs A	Rs	Rs	Rs A.
	5	0 6	200	210	15 12
5	10	0 12	210	220	16 8
10	15	1 2	220	230	17 4
15	20	1 8	230	240	18 0
20	25	1 14	240	250	18 12
25	30	2 4	250	260	19 8
30	35	2 10	260	270	20 4
35	40	3 0	270	280	21 0
40	45	3 6	280	290	21 12
45	50	3 12	290	300	22 8
50	55	4 2	300	310	23 4
55	60	4 8	310	320	24 0
60	65	4 14	320	330	24 12
65	70	5 4	330	340	25 8
70	75	5 10	340	350	26 4
75	80	6 0	350	360	27 0
80	85	6 6	360	370	27 12
85	90	6 12	370	380	28 8
90	95	7 2	380	390	29 4
95	100	7 8	390	400	30 0
100	110	8 4	400	410	30 12
110	120	9 0	410	420	31 8
120	130	9 12	420	430	32 4
130	140	10 8	430	440	33 0
140	150	11 4	440	450	33 12
150	160	12 0	450	560	34 8
160	170	12 12	560	470	35 4
170	180	13 8	470	480	36 0
180	190	14 4	480	490	36 12
190	200	15 0	490	500	37 8

SCHEDULE II.

Fixed Fees.

Number		Proper fee.
1 *Application or petition*	(*a*) When presented to any officer of the Customs or Excise Department or to any Magistrate by any person having dealings with the Government and when the subject-matter of such application relates exclusively to those dealings;	One anna.
	or when presented to any officer of Land-revenue by any person holding temporarily-settled land under direct engagement with Government, and when the subject-matter of the application or petition relates exclusively to such engagement;	Two annas.
	or when presented to any Municipal Commissioner under any Act for the time being in force for the conservancy or improvement of any place, if the *application or petition* relates solely to such conservancy or improvement;	One anna.
	or when presented to any Civil Court other than a principal Civil Court of original jurisdiction or to any Court of Small Causes constituted under Act No IX of 1887, or to a	Two annas.

Fixed Fees—Contd.

Number.		Proper fee
1. Application, *ctd*	Collector or other officer of revenue in relation to any suit or case in which the amount or value of the subject-matter is less than fifty rupees;	
	or when presented to any Civil, Criminal or Revenue Court, or to any Board or executive officer for the purpose of obtaining a copy or translation of any judgment, or decree or order passed by such Court, Board or officer, or of any other document on record in such Court or office.	Two annas.
	(*b*) When containing a complaint or charge of any offence other than an offence for which police officers may, under the Criminal Procedure Code, arrest without warrant, and presented to any Criminal Court;	
	or when presented to a Civil, Criminal or Revenue Court or to a Collector, or any Revenue officer having jurisdiction equal or subordinate to a Collector, or to any Magistrate in his executive capacity, and not otherwise provided for by this Act;	In the case of a criminal complaint one rupee and in other cases twelve annas.

Fixed Fees—Contd.

Number.		Proper fee.
1 Application, —*ctd.*	or to deposit in Court revenue or rent;	Eight annas.
	or for determination by a Court of the amount of compensation to be paid by landlord to his tenant	
	(*c*) When presented to a Chief Commissioner or other Chief Controlling Revenue or Executive authority or to a Commissioner of Revenue or Circuit, or to any chief officer charged with the executive administration of a division and not otherwise provided for by this Act	one rupee eight annas.
	(*d*) (*i*) When presented to a High Court under *section 115* of the Code of Civil Procedure, 1908, for revision of an order	
	(*a*) when the value of the suit or proceeding to which the order relates does not exceed thousand rupees;	Five rupees.
	(*b*) when the value of the suit or proceeding exceeds thousand rupees.	Ten rupees.
	(*ii*) When presented to a High Court otherwise than under that section.	Two rupees.

Fixed Fees—Contd.

Number		Proper fee.
1-A Application to any Civil Court that records may be called for from another Court.	When the Court grants the application and is of opinion that the transmission of such records involves the use of the post	Twelve annas in addition to any fee levied on the application under clause (*a*), clause (*b*) or clause (*d*) of article 1 of this schedule.
2 Application for leave to sue as a pauper.		Eight annas
3 Application for leave to appeal as a pauper	(*a*) When presented to a District Court or a Sub-Court	One rupee.
	(*b*) When presented a Commissioner or a High Court	Two rupees.
4. *Omitted*		
5. Plaint or memorandum of appeal in a suit to establish or disprove a right of occupancy.		Eight annas
6. Bail-bond or other instrument of obligation given in pursuance of an order made by a Court or Magistrate under any section of the Code of Criminal Procedure, 1898, or the Code of Civil Procedure, 1908, and not otherwise provided for in this Act		Eight annas.
7. Undertaking under section 49 of the Indian Divorce Act, 1869		Eight annas.
8. [*Rep. by he Repealing and Amending Act, 1891 (XII of 1891).*]		
9 [*Rep. by Act XII of 1891*]		

Fixed Fees—Contd.

Number		Proper fee
10. Mukhtarnama, Vakalatnama or any paper signed by an *Advocate signifying* or intimating that he is retained for a party.	When presented for the conduct of any one case—	
	(*a*) to any Civil or Criminal Court other than a High Court or to any Revenue Court, or to any Collector or Magistrate, or other except those mentioned in clauses (*b*) and (*c*) of this number,	One rupee.
	(*b*) to a Commissioner of Revenue, Circuit or Customs or to any officer charged with the executive administration of a Division, not being the Chief Revenue or Executive Authority,	One rupee eight annas
	(*c*) to a High Court, Chief Commissioner, Board of Revenue, or other Chief Controlling Revenue or Executive Authority	Three rupees.
11. Memorandum of appeal when the appeal is from an order inclusive of an order determining any question under section 47 or section 144 of the Code of Civil Procedure, 1908, and is presented.	(*a*) to any Civil Court other than a High Court, or to any Revenue Court or Executive Officer other than the High Court or Chief Controlling Revenue or Executive Authority;	One rupee.
	(*b*) to a High Court or Chief Commissioner, or other Chief Controlling Executive or Revenue Authority.	Two rupees.
12. Caveat.		Ten rupees.
13. *Omitted.*		

Fixed Fees—Contd.

Number.		Proper fee.
14. Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866		Five rupees.
15. [*Rep Act 5 of 1908*]		
16. [*Rep by Act 6 of 1959, s 18 (1)*]		
17. Plaint or memorandum of appeal in a suit—		
(*i*) to alter or set aside a summary decision or order of any of the civil courts not established by Letters Patent or of any Revenue Court,		Fifteen rupees.
(*ii*) to alter or cancel any entry in a register of the names of properties of revenue-paying estates		Fifteen rupees.
(*iii*) for relief under section 14 of the Religious Endowments Act, 1863, or under section 91 or section 92 of the Code of Civil Procedure, 1908		Fifty rupees.
17-A Plaint or memorandum of appeal in declaratory decree where a suit—		
(*i*) to obtain a declaratory decree where no consequential relief is prayed,	When the plaint is presented to or the memorandum of appeal is against the decree of—	
(*ii*) to set aside an award;	*a* District Munsiff's Court or the City Civil Court	Fifteen rupees.

Fixed Fees—Contd.

Number.		Proper fee.
10 Mukhtarnama, Vakalatnama or any paper signed by an Advocate signifying or intimating that he is retained for a party.	When presented for the conduct of any one case—	
	(*a*) to any Civil or Criminal Court other than a High Court or to any Revenue Court, or to any Collector or Magistrate, or other except those mentioned in clauses (*b*) and (*c*) of this number,	One rupee.
	(*b*) to a Commissioner of Revenue, Circuit or Customs or to any officer charged with the executive administration of a Division, not being the Chief Revenue or Executive Authority,	One rupee eight ann
	(*c*) to a High Court, Chief Commissioner, Board of Revenue, or other Chief Controlling Revenue or Executive Authority.	Three rupees.
11. Memorandum of appeal when the appeal is from an order inclusive of an order determining any question under section 47 or section 144 of the Code of Civil Procedure, 1908, and is presented	(*a*) to any Civil Court other than a High Court, or to any Revenue Court or Executive Officer other than the High Court or Chief Controlling Revenue or Executive Authority,	One rupee.
	(*b*) to a High Court or Chief Commissioner, or other Chief Controlling Executive or Revenue Authority.	Two rupees.
12. Caveat.		Ten rupees.
*13. *Omitted.*		

Fixed Fees—Contd.

Number.		Proper fee.
14. Petition in a suit under the Native Converts' Marriage Dissolution Act, 1866		Five rupees.
15. [*Rep Act 5 of 1908*]		
16 [*Rep by Act 6 of 1959, s 18 (1)*]		
17. Plaint or memorandum of appeal in a suit—		
(*i*) to alter or set aside a summary decision or order of any of the civil courts not established by Letters Patent or of any Revenue Court,		Fifteen rupees
(*ii*) to alter or cancel any entry in a register of the names of properties of revenue-paying estates		Fifteen rupees.
(*iii*) for relief under section 14 of the Religious Endowments Act, 1863, or under section 91 or section 92 of the Code of Civil Procedure, 1908		Fifty rupees.
17-A Plaint or memorandum of appeal in declaratory decree where a suit—		
(*i*) to obtain a declaratory decree where no consequential relief is prayed;	When the plaint is presented to or the memorandum of appeal is against the decree of—	
(*ii*) to set aside an award;	*a* District Munsiff's Court or the City Civil Court.	Fifteen rupees.

Amendment of section 18.

4. In section 18 between the word "of" and the word "unless" for the word "eight annas" the words "one rupee" shall be substituted.

"5 For Article 1 of Schedule I the following Article shall be substituted, namely :—

Number	—	Proper fee.
I. Plaint—Written statement pleading a set-off or counter-claim or memorandum of appeal (not otherwise provided for in this Act) or of cross objection presented to any civil or revenue court except those mentioned in section 3	When the amount or value of the subject-matter in dispute does not exceed five rupees.	Six annas
	When such amount or value exceeds five rupees, but does not exceed five hundred rupees, for every five rupees or part thereof in excess of five rupees up to one hundred rupees.	Six annas.
	When such amount or value exceeds one hundred rupees, but does not exceed five hundred rupees, for every ten rupees or part thereof in excess of one hundred rupees up to five hundred rupees.	Twelve annas
	When such amount or value exceeds five hundred rupees, for every ten rupees or part thereof up to one thousand rupees.	One rupee two annas.
	When such amount or value exceeds one thousand rupees, for every one hundred rupees or part thereof in excess of one thousand rupees up to five thousand rupees.	Seven rupees eight annas
	When such amount or value exceeds five thousand rupees, for every two hundred and fifty rupees or part thereof in excess of five thousand rupees, up to ten thousand rupees.	Fifteen rupees

Number.	—	Proper fee.
I Plaint, etc —concluded	When such amount or value exceeds ten thousand rupees, for every five hundred rupees or part thereof in excess of ten thousand rupees, up to twenty thousand rupees	Twenty-two rupees eight annas
	When such amount or value exceeds twenty thousand rupees, for every one thousand rupees or part thereof in excess of twenty thousand rupees up to thirty thousand rupees	Thirty rupees.
	When such amount or value exceeds thirty thousand rupees, for every two thousand rupees or part thereof, in excess of thirty thousand rupees, up to fifty thousand rupees	Thirty rupees.
	When such amount or value exceeds fifty thousand rupees, for every five thousand rupees, or part thereof, in excess of fifty thousand rupees	Thirty rupees.

(2) The proviso, as to the maximum, after the ninth entry in the second column of the said article in the same schedule, shall be omitted.

Re-enactment and amendment of Schedule I, Article 13

6. Article 13 of schedule I which was repealed by the Punjab Courts (Amendment) Act, 1912, in so far as it affected the Punjab is hereby re-enacted, save that for the words "Chief Court in the Punjab," the words "High Court of judicature at Lahore," for the figures "70" the figures "44" and for the figures "184" the figures "1918" shall be substituted ; and the words and figures "as amended by the Punjab Courts Act, 1899" shall be omitted

Amendment of table of rates of *ad valorem* fees

7. For the table of rates of *ad valorem* fees leviable on the institution of suits set forth at the end of schedule I, the table set forth in the schedule to this Act shall be substituted ;

8. In article 1 of schedule II—

Amendment of Schedule I, Article 1, clause (a)

(1) for the words "one anna" in the third column opposite clause (a) in the second column, the words "two annas" shall be substituted ;

(2) for the words "eight annas" in the third column opposite (*b*) in the second column, the words "one rupee" shall be substituted;

(3) for class (*d*), in the second column and the corresponding entry in the third column shall be substituted; the following clause and entries namely:—

Amendment of Schedule II, Articles 4, 5 and 7.

(*d*) When presented to the High Court—

(*i*) Under the Indian Companies Act 1913, for winding up a Company,	One hundred rupees.
(*ii*) Under the same Act for taking some other judicial action.	Five rupees.
(*iii*) In all other cases ...	Two rupees.

Amendment of Schedule II, Articles 4, 5 and 7.

9. In the third column of articles 4, 5 and 7 respectively of schedule II—

for the words "eight annas" the words "one rupee" shall be substituted.

Amendment of Schedule II, Article 10, clause (*a*)

10. In the third column of article 10 schedule II—

for the words "eight annas" opposite clause (*a*) in the second column, the words "one rupee" shall be substituted.

Amendment of Schedule II, Article 11, clauses (*a*) and (*b*)

11. In the third column of article 11 of schedule II—

(1) for the words "eight annas" opposite clause (*a*) in the second column, the words "one rupee" shall be substituted;

(2) for the words "two rupees" opposite clause (*b*) in the second column, the words "four rupees" shall be substituted.

New Article to Schedule II.

12. The following new article with the corresponding entry in the third column shall be added to the first column of schedule II, namely:—

22. Plaint or memorandum of appeal in a suit by a reversioner under the Punjab Customary Law for a declaration in respect of an alienation of ancestral land.	Twenty rupees.

SCHEDULE.

Table of Rates of 'ad valorem' fees leviable on the institution of suits

(SEE SECTION 7)

When the amount or value of the subject-matter exceeds.	But does not exceed	Proper Fee (Act VII of 1870)			When the amount or value of the subject-matter exceeds	But does not exceed.	Proper Fee. (Act VII of 1870)		
Rs	Rs	Rs	A	P.	Rs	Rs	Rs	A.	P.
...	5	0	6	0	380	390	29	4	0
5	10	0	12	0	390	400	30	0	0
10	15	1	2	0	400	410	30	12	0
15	20	1	8	0	410	420	31	8	0
20	25	1	14	0	420	430	32	4	0
25	30	2	4	0	430	440	33	0	0
30	35	2	10	0	440	450	33	12	0
35	40	3	0	0	450	460	34	8	0
40	45	3	6	0	460	470	35	4	0
45	50	3	12	0	470	480	36	0	0
50	55	4	2	0	480	490	36	12	0
55	60	4	8	0	490	500	37	8	0
60	65	4	14	0	500	510	57	6	0
65	70	5	4	0	510	520	58	8	0
70	75	5	10	0	520	530	59	10	0
75	80	6	0	0	530	540	60	12	0
80	85	6	6	0	540	550	61	14	0
85	90	6	12	0	550	560	63	0	0
90	95	7	2	0	560	570	64	2	0
95	100	7	8	0	570	580	65	4	0
100	110	8	4	0	580	590	66	6	0
110	120	9	0	0	590	600	67	8	0
120	130	9	12	0	600	610	68	10	0
130	140	10	8	0	610	620	69	12	0
140	150	11	4	0	620	630	70	14	0
150	160	12	0	0	630	640	72	0	0
160	170	12	12	0	640	650	73	2	0
170	180	13	8	0	650	660	74	4	0
180	190	14	4	0	660	670	75	6	0
190	200	15	0	0	670	680	76	8	0
200	210	15	12	0	680	690	77	10	0
210	220	16	8	0	690	700	78	12	0
220	230	17	4	0	700	710	79	14	0
230	240	18	0	0	710	720	81	0	0
240	250	18	12	0	720	730	82	2	0
250	260	19	8	0	730	740	83	4	0
260	270	20	4	0	740	750	84	6	0
270	280	21	0	0	750	760	85	8	0
280	290	21	12	0	760	770	86	10	0
290	300	22	8	0	770	780	87	12	0
300	310	23	4	0	780	790	88	14	0
310	320	24	0	0	790	800	90	0	0
320	330	24	12	0	800	810	91	2	0
330	340	25	8	0	810	820	92	4	0
340	350	26	4	0	820	830	93	6	0
350	360	27	0	0	830	840	94	8	0
360	370	27	12	0	840	850	95	10	0
370	380	28	8	0	850	860	96	12	

Table of Rates of 'ad valorem' fees leviable on the institution of suits.

When the amount or value of the subject-matter exceeds	But does not exceed.	Proper Fee. (Act VII of 1870)			When the amount or value of the subject-matter exceeds.	But does not exceed	Proper Fee (Act VII of 1870)		
Rs	Rs	Rs.	A.	P	Rs.	Rs.	Rs	A.	P.
860	870	97	14	0	4,400	4,500	375	0	0
870	880	99	2	0	4,500	4,600	382	8	0
880	890	100	2	0	4 600	4,700	390	0	0
890	900	101	4	0	4,700	4,800	397	8	0
900	910	102	6	0	4,800	4,900	405	0	0
910	920	103	8	0	4,900	5,000	412	8	0
920	930	104	10	0	5,000	5,250	427	8	0
930	940	105	12	0	5,250	5,500	442	8	0
940	950	106	14	0	5,500	5,750	457	8	0
950	960	108	0	0	5,750	6,000	472	8	0
960	970	109	2	0	6,000	6,250	487	8	0
970	980	110	4	0	6,250	6,500	502	8	0
980	990	111	6	0	6,500	6,750	517	8	0
990	1,000	112	8	0	6,750	7,000	532	8	0
1,000	1,100	120	0	0	7,000	7,250	547	8	0
1,100	1,200	127	8	0	7,250	7,500	562	8	0
1,200	1,300	135	0	0	7 500	7,750	577	8	0
1,300	1,400	142	8	0	7,750	8,000	592	8	0
1,400	1,500	150	0	0	8,000	8,250	607	8	0
1,500	1,600	157	8	0	8,250	8,500	622	8	0
1,600	1,700	165	0	0	8,500	8,750	637	8	0
1,700	1,800	172	8	0	8,750	9,000	652	8	0
1,800	1,900	180	0	0	9 000	9,250	667	8	0
1,900	2,000	187	8	0	9,250	9,500	682	8	0
2,000	2,100	195	0	0	9,500	9,750	697	8	0
2,100	2,200	202	8	0	9,750	10 000	712	8	0
2,200	2,300	210	0	0	10 000	10,500	735	0	0
2,300	2,400	217	8	0	10,500	11,000	757	8	0
2,400	2,500	225	0	0	11,000	11,500	780	0	0
2,500	2,600	232	8	0	11,500	12 000	802	8	0
2 600	2,700	240	0	0	12,000	12,500	825	0	0
2 700	2,800	247	8	0	12,500	13 000	847	8	0
2,800	2,900	255	0	0	13 000	13,500	870	0	0
2,900	3,000	262	8	0	13,500	14 000	892	8	0
3,000	3,100	270	0	0	14 000	14,500	915	0	0
3,100	3 200	277	8	0	14,500	15,000	937	8	0
3,200	3 300	285	0	0	15 000	15,500	960	0	0
3,300	3,400	292	8	0	15,500	16 000	992	8	0
3 400	3,500	300	0	0	16 000	16 500	1,005	0	0
3,500	3 600	307	8	0	16 500	17,000	1,027	8	0
3 600	3 700	315	0	0	17 000	17,500	1,050	0	0
3,700	3 800	322	8	0	17,500	18 000	1,072	8	0
3,800	3 900	330	0	0	18 000	18 500	1,095	0	0
3,900	4 000	337	8	0	18 500	19,000	1,117	8	0
4 000	4,100	345	0	0	19 000	19 500	1,140	0	0
4,100	4 200	352	8	0	19 500	20 000	1,162	8	0
4 200	4 300	360	0	0	20 000	21 000	1,192	8	0
4,300	4,400	367	8	0	21,000	22,000	1,222	8	0

Table of Rates of 'ad valorem' fees leviable on the institution of suits

When the amount or value of the *subject-matter* exceeds	But does not exceed	Proper Fee (Act VII of 1870)			When the amount or value of the subject-matter exceeds	But does not exceed.	Proper Fee. (Act VII of 1870)		
Rs	Rs	Rs	A	P	Rs	Rs	Rs.	A	P.
22 000	23 000	1,252	8	0	1,80 000	1,85 000	2,572	8	0
23 000	24 000	1,282	8	0	1 85 000	1,90 000	2,602	8	0
24 000	25 000	1 3[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
25 000	26 000	1 3[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
26 000	27 000	1,3[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
27 000	28 000	1,4[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
28 000	29 000	1 4[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
29 000	30 000	1 4[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
30 000	32 000	1,4[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
32 000	34 000	1,5[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
34 000	36 000	1,5[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
36 000	38 000	1,5[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
38 000	40 000	1,6[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
40 000	42 000	1 6[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
42 000	44 000	1,6[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
44,000	46 000	1,7[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
46,000	48 000	1,7[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
48 000	50 000	1,7[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
50,000	55 000	1,7[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
55 000	60 000	1,8[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
60 000	65 000	1,8[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
65 000	70 000	1,8[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
70 000	75 000	1,9[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
75 000	80 000	1,9[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
80 000	85 000	1 9[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
85 000	90 000	2 0[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
90 000	95 000	2 0[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
95,000	1 00 000	2,0[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
1,00 000	1 05 000	2 0[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
1,05 000	1 10 000	2,1[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
1,10 000	1 15 000	2 1[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
1,15 000	1 20 000	2 1[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
1 20,000	1 25 000	2 2[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
1,25 000	1 30 000	2 2[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
1 30 000	1 35 000	2 2[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
1,35 000	1 40 000	2 3[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
1,40 000	1 45 000	2 3[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
1,45 000	1 50 000	2 3[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
1,50 000	1 55 000	2 3[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
1 55 000	1 60 000	2 4[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
1 60 000	1 65 000	2 4[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
1,65 000	1 70 000	2,4[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
1,70 000	1 75 000	2,51[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0
1,75 000	1 80 000	2 5[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	0

And when the amount or value of the subject matter exceeds Rs. 4,00,000 the proper fee leviable shall be Rs [illegible],862 annas 8 plus Rs. 30 for each five thousand rupees or part thereof in excess of Rs 4,00,000.

APPENDIX A

Notifications reducing and remitting Court Fees by G. G. in Council.

No. 4650, dated the 10 September, 1889 [Gazette of India, 1889, Part I, p. 506] and subsequent notifications.

Under section 35 of the Court-Fees Act, VII of 1870, and in supersession of all previous notifications under that section, it is hereby notified that, in exercise of the power to reduce or remit, in the whole or in any part of British India, all or any of the fees mentioned in the First and second Schedules to the said Act, the Governor-General in Council has been pleased to make the reductions and remissions hereinafter set forth, namely.

A.—General for the whole of British India.

(1) to remit the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper which has become spoiled or unfit for use, or is no longer required for use, and on applications for renewal of stamp paper which has become spoiled or unfit for use ;

(2) to remit the fees chargeable on applications in writing, relating exclusively to the purchase of salt which is the property of the Government ;

(3) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the presiding Judge or officer, without summoning the defendant, rejects it not for any substantial defect but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the court is situated, together with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstances above described, and that the value of the stamp should, in his opinion, be refunded ;

(4) to remit the fees chargeable on—

(a) copies of village settlement-records furnished to landholders and cultivators during the currency or at the termination of settlement-operations ;

(b) lists of fields extracted from village settlement-records for the purpose of being filed with petitions of plaint in Settlement Courts·

Provided that nothing in this clause shall apply to copies of judicial proceedings, or to copies of village settlement-records (other than lists of fields) extracted as aforesaid, which may be filed in any court or office ,

(5) *to declare that the fee chargeable on a plaint filed in a suit for possession of immoveable property under section 9 of the Specific Relief Act I of 1877, shall be one-half of the amount prescribed in the scale of fees for plaints mentioned in article I of the First Schedule.*

(6) to direct that the fee chargeable on appeals from orders under clause (c) of section 244 of the Code of Civil Procedure (Act XIV of 1882) shall be limited to the amounts chargeable under article 11 of the Second Schedule ;

(7) to remit the fees chargeable on security-bonds for the keeping of the peace, by, or good behaviour of, persons other than the executants ;

(8) to remit the fee payable under article 1, clause (c), of the Second Schedule on an application or petition presented to a Chief Commissioner, when the application or petition is accompanied by a petition to the Government of India and contains merely a request that that petition may be forwarded to the Government of India.

(9) to remit the fees chargeable under articles 6, 7 and 9 of the First Schedule on copies furnished by Civil or Criminal Courts or Revenue Courts or Offices for the private use of persons applying for them :

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of Justice or received by any public officer ;

Clause (5) is superseded by the amendment made in article 2 of Schedule I of the Court-fees Act, 1870, by the Repealing and Amending Act, 1891 (12 of 1891), Sch II.

Clause (6) as it now stands is the subject of a separate notification, and is inserted here in this form for convenience of reference. See Notification, No. 4344 S. R. dated 6th October, 1893, Gazette of India, 1893, Pt. I, p 575

(10) to remit the fees chargeable, under paragraph 4 of clause (a) and paragraph 2 of clause (b) of article 1 of the Second Schedule, on application for orders for the payment of deposits in cases in which the deposit does not exceed Rs. 25 in amount ;

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the application ;

(11) to remit, with reference to clause xi of Section 19 of the Act, the fees chargeable on applications for leave to occupy under direct engagement with the Government land of which the revenue is settled, but not permanently, when made by persons who do not at the time of application hold the land;

(12) to remit the fees chargeable on applications for loans under the Land Improvement Loans Act, XIX of 1883, or the Agriculturists' Loans Act, XII of 1884 ;

(13) to remit the fee chargeable on an application made by a person to the Collector under the second paragraph of section 39 of the Indian Stamp Act, I of 1879, for the return to that person, or to the Registration officer who impounded it, of a document impounded, and sent to the Collector by a Registration-officer ;

(14) to remit the fee chargeable on an application made for transfer of a stocknote from one circle to another under paragraph 6 of Resolution No. 2566, dated the 20th August, 1885 ;

(15) to remit the fees chargeable on the following documents, namely —

(a) copy of a charge framed under Section 210 of the Code of Criminal Procedure, 1882, or of a translation thereof, when the copy is given to an accused person ;

(b) copy of the evidence of supplementary witnesses after commitment when the copy is given under section 219 of the said Code to an accused person ;

(c) copy or translation of a judgment in a case other than a summons-case, and a copy of the heads of Judge's charge to the jury, when the copy or translation is given under section 371 of the said Code to an accused person ;

(d) copy or translation of the judgment in a summons-case, when the accused person to whom the copy or translation is given under section 371 of the said Code is in jail ;

(e) copy of an order of maintenance, when the copy is given under section 490 of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid ;

(f) copy furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judge's charge to the jury or of any order, deposition or other part of the record, when the copy is not a copy which may be granted under any of the preceding sub-clauses without the payment of a fee, but is copy which, on its being applied for under section 548 of the said Code, the Judge or Magistrate, for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment ;

(g) copies of all documents furnished under the orders of any court or magistrate to any Government Advocate or pleader or other person especially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court ;

(h) copies of all documents which any such Advocate, Pleader or other person is required to take in connection with any such trial or investigation, for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connection with any criminal proceedings ;

(i) copies of judgments or depositions required by officers of the Police Department in the course of their duties

(16) to direct that the fee chargeable—

(a) on the application to the collector, or to any officer or person discharging all or any of the functions of a collector, with respect either to liability to assessment or to the amount of an assessment under Act II of 1886 (*an Act for imposing a tax on income derived from sources other than agriculture*), and

(b) on a copy of an order under section 26 of the same Act, shall be limited to one anna ;

(17) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any court or public office ;

(18) to direct that, when a part of an estate paying annual revenue to the Government under a settlement which is not

permanent is recorded in the Collector's register as separately assessed with such revenue, the value of the subject-matter of a suit for the possession of, or to enforce a right of pre-emption in respect of, a fractional share of that part shall, for the purposes of the computation of the amount of the fee chargeable in the suit, be deemed not to exceed five times such portion of the revenue separately assessed on that part as may be rateably payable in respect of the share;

(19) to direct that, if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted, except where otherwise expressly provided by this notification,

(19a) to remit the fee chargeable on an application for the grant of a license for the vend of stamps;

(19b) to direct that no Court-fee shall be charged on an application for the repayment of a fine or of any portion of a fine the refund of which has been ordered by competent authority;

(19c) to remit the fees chargeable on applications for copies of documents detailed in clauses 4 and 15 *supra*.

(19d) to remit the duty chargeable in respect of Indian Probates, Letters of Administration or Succession Certificates on the share or other interest of a deceased member of a company formed under the Indian Companies Act, 1882 (VI of 1882), provided that the said share or interest was registered in a branch register in the United Kingdom under the Indian Companies (Branch Registers) Act, 1900 (IV of 1900), and that such member was at the date of his decease domiciled elsewhere than in India,

(19e) to remit the fees chargeable on applications presented to officers of land revenue for the suspension or remission of revenue on the ground that a crop has not been sown or has failed;

(19f) to remit the fee chargeable on applications and petitions presented to a Collector or any Revenue Officer having jurisdic-

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Clause (19a) was inserted by Notification No. 4276-S. R., dated 23rd September, 1897, see Gazette of India, 1897, Pt. 1, p. 864.

Clause (19b) forms the subject of a separate Notification (No. 3359-S. R., dated 6th August, 1896, see Gazette of India, 1896, Pt. I, p. 604), and is inserted here in this form for convenience of reference.

Clause (19c) forms the subject of a separate Notification (No. 1150 Exc., dated 24th February, 1905, see Gazette of India, 1905, Pt. I, p. 117).

Clauses (19d to 19f) also form the subject of separate notifications, see Notifications Nos. 881-S. R., dated the 17th February, 1900, 4385-S. R., dated the 19th August, 1901, 6069-Exc., dated the 26th October, 1906, Gazette of India, 1900, 1901, 1906. Pt. I. pp. 100, 608 and 760, respectively.

tion equal or subordinate to a Collector for advice or assistance from the Agricultural Department of the Province ;

(19g) (a) to remit all fees payable under Schedule II upon applications relating to licenses or duplicates granted or renewed under the Indian Arms Rules, 1909, other than licenses or duplicates of the nature hereinafter referred to in subhead (b), and

(b) to reduce to one anna all fees exceeding one anna payable under the schedule upon applications relating to licenses or duplicates granted or renewed under the said rules in respect of which—

(i) no fee is payable under the said rules, or

(ii) the fee payable under the said rules has been collected in full.

(19h) to remit the fees chargeable on applications for the grant of licenses of the nature mentioned in items 8 and 9 of the Schedule II appended to the Indian Explosives Rules, 1914, to possess gun-powder, other explosive or detonators required bonafide for blasting purpose No 1938F dated 17. 12. 1914. Gazette of India 19 12 14 Part I

(19i) to make in the whole of British India the remissions hereinafter set forth in the fees leviable under articles 11, 12, 12A of the first Schedule of the said Act, on the property of any person subject to Military law either under the Army Act (44 and 45 Vict C 58) or under the Indian Army Act, VIII of 1911, who is killed or dies of wounds inflicted, accident occurring or disease contracted within twelve months before the death, while on active service in the present war, namely :—

(a) where the amount or the value of the property in respect of which the grant of probate or letters of administration is made or which is specified in the certificate under the Succession Certificate Act, 1899 or in the certificate under Bombay Regulation No. 8 of 1872, does not exceed Rs. 5,000, to remit the whole of the fees leviable in respect of the property,

(b) where the said amount or value exceeds Rs. 5,000 to remit the whole of the said fees in respect of the first Rs. 5,000 and

(c) where the property passes more than once in consequence of such deaths, to remit in the second subsequent successions, the whole of the said irrespective of the value or amount of rop *No. 120F dated 14-1-15, Gaz 6-1-1915 Part I pp. 160-161.*

(19j) to remit in the whole of British India the fees chargeable under article 1 (a) and (b) of Schedule II of the Act on applications for mutation of names in respect of the property of any person subject to military law either under the Army Act (44 and 45 Vict C. 58) or under the Indian Army Act 1911 (VIII of 1911) who is killed or dies of wounds inflicted, accident occurring or disease contracted within 12 months, before death, while on active service in the present war. *No. 371F dated 25-2-1915, Gazette of India dated 27-9-1915 Part I p. 350.*

(19k) to remit the fees chargeable on applications for the grant of licenses issued in accordance with the provisions of any rule made under Section 9 of the Petroleum Act 1899 (VIII of 1899) for the possession of dangerous petroleum for use on motor vehicles and for its transport thereon for the purpose of use therein *No 134F dated 27-9-1916. Gazette of India dated 30-9-1916 Part I p. 1461.*

B—Special for the Presidency of Fort St. George only.

For Revised Notifications by the Governor in Council under the Devolution Act, 1920, see infra.

(20) to direct that the fees chargeable on the following documents filed in claims preferred under the Madras Hereditary Village Offices Act, 1895 (Madras Act III of 1895), shall be limited to the sum specified below against each, namely:—

plaint, petition for execution or memorandum of appeal to a Collector—eight annas;

memorandum of appeal to the Board of Revenue—two rupees;

(21) to remit the fees chargeable (a) on copies of judgments, decrees or orders passed on claims preferred under the Madras Hereditary Village Officers Act, 1895 (Madras Act III of 1895), and (b) on applications filed by either party in the course of the trial of suits or appeals or in the course of execution of decrees under the said Act;

(22) to remit the fees chargeable under the First Schedule on plaints in summary suits brought before Collectors under Madras Act VIII of 1865 (*An Act to consolidate and improve the laws which define the process to be taken for the recovery of rent*);

(23) to reduce the fees chargeable in suits by Government raiyats, for the recovery of land sold for arrears of revenue, to

Clauses (20) and (21) were substituted for the original clauses by Notification No 3119-S R., dated the 6th August, 1897, Gazette of India, 1897, Part I, p. 666.

the amount which would be chargeable if the value of the subject-matter were only the rent of the land payable for the year next before the date of presentation of the plaint ;

(23a) to remit the fees chargeable under the said Act on applications made by toddy-drawers and shop-keepers for the grant of licenses permitting them or their servants to draw toddy from cocoanut and other plants ,

(23b) to remit the fees chargeable on all communications made under Chapter II of the Madras Proprietary Estates Village Service Act, 1894 (Madras Act II of 1894) by a proprietor to any Revenue Officer relating to the appointment and control of village officers ,

[2](23c) to remit the fees chargeable on certain applications made by cultivators of the hemp plant (*Cannabis Sativa or Indica*) in the Madras Presidency

[2](23d) to remit the fee chargeable on applications made by distillers and warehouse-keepers in the Madras Presidency to the Excise Officer in Charge of the distillery or warehouse for the issue of repermit for the transport of country spirit ;

(23e) to remit the fees chargeable under item 1 (a) of Schedule II of the Act on applications for transfer of registry in the revenue accounts in respect of ryotwari holdings in the Madras Presidency, *No 874F dated 29-8-1913, Gazette of India dated 29-3-1913, Part I p 826*

D —Special for Bengal only

Vide infra Revised Notification under the Devolution Act, superseding clauses (36) to *(37i)*

G —Special for the Punjab only.

(42) to remit the fees chargeable on copies of orders or proceedings under Section 37 of the Punjab Land-revenue Act, XVII of 1887, made or recorded by Collectors or other Revenue-officers engaged in revising a record-of-rights under a notification published in accordance with Section 32 of the said Act :

Provided that the copy is furnished for the purpose of being filed with an application or petition to a Collector or other Revenue-officer engaged as aforesaid in revising a record-of-

Clauses (23a) *was inserted by Notification* No. 2661-S R, *dated the* 15th June, 1897 *see* Gazette of India, 1897, Pt I, p. 525.

For 23 (c) *see* Notification No 225-S. R, dated the 11th January, 1901, Gazette of India, 1901, Pt I, p 32

[2] *See* Notification No 3814-S R., dated 26th June 1903, Gazette of India, 1903, Pt I, p 538

rights, or to the Commissioner of the Division, or to the Financial Commissioner, Punjab, relating to matters connected with the assessment of land or the ascertainment of rights thereto, or interests therein, if presented previous to the final confirmation of such revision ;

(43) to remit the fees chargeable on applications under Section 97 of the Punjab Land-revenue Act, XVII of 1887, made by village-officers in accordance with the provisions of rule 83 of the rules under that Act published with the Notification of the Punjab Government, No. 76, dated the 1st March, 1888 ;

[2](43a) to remit in the territories administered by the Lieutenant-Governor of the Punjab the fees chargeable on plaints and suits brought against British subjects by Bhutanis ordinarily residing outside British India :—

(i) for the recovery of debts ;

(ii) appertaining to the custody of a woman ; or

(iii) appertaining to inheritance ;

[1](43b) to remit in the territories administered by the Lieutenant-Governor of the Punjab, the fees chargeable on copies of all records maintained under the provisions of Chapter IV of the Punjab Land-Revenue Act, 1887 (XVII of 1887), when such copies are exhibited or recorded in any Court of Justice or are received or furnished by any public officer ;

(43c) to remit the fees chargeable under the Act on applications for the grant of fishing licenses prescribed by the rules made by the Government of the Punjab under Section 3 of the Punjab Fisheries Act 1914 (II of 1914).

H.—Special for Burma only.

[2](44) to remit the fees chargeable on the following documents furnished to cultivators, namely:

certified copies of extracts from settlement or supplementary survey registers containing particulars of the holding of cultivators:

[2](45) to remit the fees chargeable in Upper Burma on plaints, applications, petitions and copies which are filed, exhibited or recorded in the Court of a Circle Officer, or in any Court presided over by a Thugyi or Myothugyi ; or which are received or furnished by a Thugyi or Myothugyi.

[1] For (43b) *see* Notification No. 2807-S. R., dated 26th June, 1896, Gazette of India, 1896, Pt. I, p. 604.

[2] Clauses 44 and 45 were substituted for clauses 44 to 46 by Notification No. 4724-S. R., dated the 22nd October 1897, *see* Gazette India, 1897, Pt. I, p. 956.

Explanation —For the purpose of this clause the expression "Thugyi or Myothugyi" includes any person, however designated, who in any part of Upper Burma occupies a position similar to that which is held in other parts by a Thugyi or Myothugyi ,

(45) to remit in Lower Burma the fees chargeable on applications presented under section 45 of the Burma Land and Revenue Act (II of 1876), by Revenue-officers with a view to the realisation of arrears of revenue ,

[4](46a) to remit in all parts of Burma except the Shan States, the fees chargeable under section 35 of the Act on applications presented to officers of land-revenue for the notification errors in the assessment of land revenue ,

K —Special for the Bombay Presidency, Bengal, the North-Western Provinces and Oudh, the Punjab, Lower Burma, the Central Provinces, Ajmir and Coorg

[2](48) *to direct that whenever, upon payment of the full fee, a certificate of administration has been granted under Act XL of 1858 (An Act for making better provision for the care of the persons and property of Minors in the Presidency of Bombay), and a fresh certificate is for any reason subsequently granted in respect of the same estate, no fee shall be chargeable upon the fresh certificate so granted.*

British Beluchistan

The Governor-General of India in Council has been pleased to extend the remissions and reductions specified in rules 1 to 19 (b) set out above to British Beluchistan by Notification No 3633 I B of the Govt of India dated 18th Nov 1913 and published in the Gazette of India dated 22nd Nov. 1913 Part 1 pages 1109 to 1112.

For cl (46) *see* Notification No 2243-S. R , dated 22nd May, 1896, Gazette of India 1896, Pt I, p. 379

APPENDIX B

Revised Notifications under S. 35.

(1)

FOR BENGAL ONLY.

No 1872]—The 23rd May 1921.—Under section 35 of the Court Fees Act, 1870 (VII of 1870), as amended by the Devolution Act, 1920 (XXXVIII of 1920), and in supersession of all previous notifications under that section, it is hereby notified that in exercise of the power to reduce or remit in the whole or in any part of the territories under his administration, all or any of the fees mentioned in the First and Second Schedules of the Court-fees Act, 1870 (VII of 1870), the Governor in Council is pleased to make the reductions and remissions hereinafter set forth, namely —

(1) to remit the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper which has become spoiled or unfit for use, or is no longer required for use and on applications for renewal of stamped paper which has become spoiled or unfit for use;

(2) to remit the fees chargeable on applications in writing, relating exclusively to the purchase of salt which is the property of the Government;

(3) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the presiding Judge or officer, without summoning the defendant, rejects it not for any substantial defect but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the Court is situated, together with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstances above described, and that the value of the stamp should, in his opinion, be refunded;

(4) to remit the fees chargeable on—

(*a*) copies of village settlement-records furnished to land-

holders and cultivators during the currency or at the termination of settlement operations.

(b) lists of fields extracted from village settlement-records for the purpose of being filed with petitions of plaint in Settlement Courts

Provided that nothing in this clause shall apply to copies of judicial proceedings, or to copies of village settlement-records (other than lists of fields extracted as aforesaid, which may be filed in any Court or office ,

(5) to direct that the fee chargeable on appeals from orders under section 47 *of the Code of Civil Procedure, 1908* (Act V of 1908) shall be limited to the amounts chargeable under article 11 of the Second Schedule ;

(6) to remit the fees chargeable on security-bonds for the keeping of the peace by, or good behaviour of, persons other than the executants ,

(7) to remit the fee payable under article 1, clause (c), of the Second Schedule on an application or petition presented to a Chief Commissioner, when the application or petition is accompanied by a petition to the Government of India and contains merely a request that that petition may be forwarded to the Government of India.

(8) to remit the fees chargeable under articles 6, 7 and 9 of the First Schedule on copies furnished by Civil or Criminal Courts or Revenue Courts or Offices for the private use of persons applying for them ;

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of Justice or received by any public officer ;

(9) to remit the fees chargeable, under paragraph 4 of [illegible] 1 of the Second [illegible] nent of deposits [illegible] 25 in amount ;

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the applications ;

(10) to remit, with reference to clause xi of section 19 of the Act, the fees chargeable on applications for leave to occupy under direct engagement with the Government land of which the revenue is settled, but not permanently, when made by persons who do not at the time of application hold the land ;

(11) to remit the fees chargeable on applications for loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884) ;

(12) to remit the fee chargeable on an application made by a person to the Collector under sub-section (2) of section 42 of the Indian Stamp Act, 1899 (II of 1899), for the return to that person, or to the Registration Officer who impounded it, of a document impounded and sent to the Collector by a Registration Officer,

(13) to remit the fees chargeable on the following documents, namely —

(a) copy of a charge framed under section 210 of the Code of Criminal Procedure, 1898 (Act V of 1898), or of a translation thereof, when the copy is given to an accused person,

(b) copy of the evidence of supplementary witnesses after commitment when the copy is given under section 219 of the said Code to an accused person,

(c) copy or translation of a judgment in a case other than a summons case, and copy of the heads of the Judge's charge to the jury, when the copy or translation is given under section 371 of the said Code to an accused person,

(d) copy or translation of the judgment in a summons case, when the accused person to whom the copy or translation is given under section 371 of the said Code is in jail,

(e) copy of an order of maintenance, when the copy is given under section 490 of the said Code to the person in whose favour the order is made, or to his guardian, or to the person to whom the allowance is to be paid,

(f) copy furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judge's charge to the jury or of any order, deposition or other part of the record, when the copy is not a copy which may be granted under any of the preceding sub-clauses without the payment of a fee, but is a copy which, on its being applied for under section 548 of the said Code, the Judge or Magistrate, for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment,

(g) copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court,

(h) copies of all documents which any such Advocate, Pleader or other person is required to take in connection with any such trial or investigation, for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connection with any criminal proceedings,

(i) copies of judgments or deposition required by officers of the Police Department in the course of their duties,

(14) to remit the fee chargeable on an application to a Collector with respect either to liability to assessment, or to the amount or rate of an assessment or for a refund of income-tax under the Indian Income-tax Act, 1918 (VII of 1918) ;

(15) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court or public office,

(16) to direct that, when a part of an estate paying annual revenue to the Government under a settlement which is not permanent is recorded in the Collector's register as separately assessed with such revenue, the value of the subject-matter of a suit for the possession of, or to enforce a right of pre-emption in respect of, a fractional share of that part shall, for the purposes of the computation of the amount of the fee chargeable in the suit, be deemed not to exceed five times such portion of the revenue separately assessed on that part as may be rateably payable in respect of the share,

(17) to direct that, if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted, except where otherwise expressly provided by this notification,

(18) to remit the fee chargeable on an application for the grant of a license for the vend of stamp ;

(19) to direct that no court-fee shall be charged on an application for the repayment of a fine or of any portion of a fine the refund of which has been ordered by competent authority ;

(20) to remit the fees chargeable on applications for copies of documents detailed in clauses 4 and 13 *supra* ;

(21) to remit the duty chargeable in respect of Indian Probates, Letters of Administration or Succession Certificates on the share or other interest of a deceased member of a company formed under the Indian Companies Act, 1913 (VII of 1913), provided that the said share or interest was registered in a branch register kept in the United Kingdom in accorda

with the provisions of sections 41 and 42 of the said Act, VII of 1913, and that such member was at the date of his decease domiciled elsewhere than in India ;

(22) to remit the fees chargeable on applications presented to officers of land revenue for the suspension or remission of revenue on the ground that a crop has not been sown or has failed ;

(23) to remit the fee chargeable on applications and petitions presented to a Collector or any Revenue officer having jurisdiction equal or subordinate to a Collector for advice or assistance from the Agricultural Department of the Province ;

(24) (*a*) to remit the fees payable under Schedule II upon applications for the grant or renewal of licenses or duplicates under the Indian Arms Rules, 1920, in respect of which a fee is payable under those Rules, and

(*b*) to reduce to one anna all fees exceeding one anna payable under Schedule II upon other applications relating to licenses or duplicates granted or renewed under the said rules ;

(25) to remit the fees chargeable on applications for the grant of licenses of the nature mentioned in items 8 and 9 of Schedule II appended to the Indian Explosives Rules, 1914, to possess gun powder, other explosives or detonators required *bona fide* for blasting purposes ;

(26) to remit as follows the fees on the property of any person to military law either under the Army Act (44 and 45 Vict., C. 58) or under the Indian Army Act, 1911 (VIII of 1911) who is killed or dies of wounds inflicted, accident occuring or diseases contracted within three years before death while on active service in the present war :—

(*a*) where the amount of or value of property in respect of which the grant of probate or letters of administration is made or which is specified in the certificate under the Succession Certificate Act, 1889, does not exceed Rs. 50,000 to remit the whole of the fees leviable in respect of the property.

(*b*) where the said amount or value exceeds Rs. 50,000 to remit the whole of the said fees in respect of the first Rs. 50,000 ; and

(*c*) where any property passes more than once in consequence of such deaths to remit in the case of second and subsequent successions, the whole of the said fees irrespective of the value or amount of such property ;

(27) to remit the fees chargeable on applications for mutations of names in respect of property of any person subject to military law either under the Army Act (44 and 45 Vict. C 58) or under the Indian Army Act, 1911 (VIII of 1911) who is killed, or dies of wounds inflicted, accident occuring or diseases contracted within twelve months before death while on active service in the present war

(28) to remit the fees chargeable on applications presented to officers of Land Revenue for the suspension or remission of loans under the Land Improvement Loans Act, 1883 (XIX of 1883), *or the Agriculturists Loans Act, 1884 (XII of 1884)*

(29) to remit the fees chargeable on applications for the grant of licenses issued in accordance with the provisions of any rule made under Section 9 of the Indian Petroleum Act, 1899 (VIII of 1899), for the possession of dangerous petroleum for the use on Motor Vehicles and for its transport thereon for the purposes of use therein

(30) to remit the fees chargeable on copies of views of Civil or Revenue Court situate in the territories of His Highness the Gaekwar of Baroda forwarded to any Court in British India for execution in pursuance of the provisions of section 44 of the Code of Civil Procedure, 1908 (V of 1908)

(31) to remit in the Hill Tracts of Chittagong all the fees mentioned in the first and second Schedule:

(32) to declare that the proper court fees to be charged upon an application to deposit in any Court, but not exceeding the sum of fifteen rupees, shall be as follows:

	Proper fee.
If the amount deposited does not exceed Rs 2-8-0 . ..	One Anna
If the amount deposited exceeds Rs. 2-8-0 but does not exceed Rs 5 ..	Two Annas
If the amount deposited exceeds Rs. 5 but does not exceed Rs. 10 .	Four Annas
If the amount deposited exceeds Rs. 10 but does not exceed Rs. 15 ..	Six Annas

Provided that no fee shall be chargeable on an application to deposit rent in respect of which a fee is chargeable under any rule framed under sub-section (2) of section 61 of the Bengal Tenancy Act, 1885 (VIII of 1883)

(33) to remit the fees chargeable on applications by ryots in the Rajshahi district for licenses to cultivate the hemp pl..

(34) to remit the fees chargeable on applications or peti.

of objections referring to any entry made or proposed to be made in a draft record of rights prepared under Chapter X of the Bengal Tenancy Act, 1885 (VIII of 1885), provided that such applications or petitions are presented before the publication of such draft record under section 103A, sub-section (1), of the said Act ,

(35) to remit the fees chargeable on certified copies of entries in *record of rights furnished in accordance with* any rules for the time being in force under the Bengal Tenancy Act, 1885 (VIII of 1885), after the final publication of such record of rights under sections 103A (2) of that Act ;

(36) to remit the fees chargeable on applications for mutations of names in all Government Estates ;

(37) to remit the fees chargeable on copies of document furnished by a District Magistrate to a Pleader appointed by the Court to defend a pauper accused of murder ;

(38) to remit the fees chargeable under clause (iii) of Article 17 of Schedule II of the Act on plaints relating to suits instituted under section 106 of the Bengal Tenancy Act, 1885 (VIII of 1885), to the amount of an *ad valorem* fees chargeable under Article 1 of Schedule I of the Act, in cases when the amount of such fee would be less than Rs. 20, (as amended by No 3789 L R, dated 3-4-22)

(39) *to reduce to the sum of twelve annas the* Court fees in excess of twelve annas chargeable or certified copies of entries in a record of rights of a village or a portion thereof maintained under the Bengal Tenancy Act, 1885 (VIII of 1885). (as amended).

APPENDIX C

REDUCTIONS AND REMISSIONS

Under section 35 of the Court Fees Act as amended by the Devolution Act, by

Bihar and Orissa Government.

No $\frac{2376}{L.A.25}$ Under section 35 of the Court-fees Act, 1870 (VII of 1870), as amended by Act XXXVIII of 1920 and in supersession of all previous notifications under the section, it is hereby notified that, in exercise of the power to reduce or remit in Bihar and Orissa all or any of the fees mentioned in the First and Second Schedules to the said Act, the Government of Bihar and Orissa have been pleased to make the reductions and remissions hereinafter set forth namely —

(1) To remit the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper which has become spoiled or unfit for use, or is no longer required for use and on applications for renewal of stamped paper which has become spoiled or unfit for use ;

(2) to remit the fees chargeable on applications in writing relating exclusively to the purchase of salt which is the property of the Government

(3) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the presiding judge or officer, without summoning the defendant, rejects it not for any substantial defect but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the Court is situated, together, with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstances above described and that the value of the stamp should, in his opinion, be refunded ;

(4) to remit the fees chargeable on :—

(a) copies of village settlement-records furnished to landholders and cultivators during the currency or at the termination of settlement operations,

(b) lists of fields extracted from village settlement records for the purpose of being filed with petitions of plaint in Settlement Courts ;

Provided that noting in this clause shall apply to copies of judicial proceedings, or to copies of village settlement records (other than lists of fields) extracted as aforesaid which may be filed in any court or office ;

(5) to direct that the fees chargeable on appeals from orders under section 47 of the Code of Civil Procedure, 1908 (Act V of 1908) shall be limited to the amounts chargeable under Article 11 of the Second Schedule ;

(6) to remit the fees chargeable on security-bonds for the keeping of the peace by, or good behaviour of persons other than the executants ;

(7) to remit the fees chargeable under Article 6, 7 and 9 of the First Schedule on copies furnished by Civil or Criminal Courts or Revenue Courts or Offices for the private use of persons applying for them ;

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of Justice or received by any public officer ;

(8) to remit the fees chargeable, under paragraph 4 of clause (a) and paragraph 2 of clause (b) of Article 1 of the Second Schedule, on applications for orders for the payment of deposits in cases in which the deposit does not exceed Rs. 25 in amount ;

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the application ;

(9) to remit, with reference to Clause XI of Section 19 of the Act, the fees chargeable on applications for leave to occupy under direct engagement with the Government land of which the revenue is settled, but not permanently when made by persons who do not at the time of application hold the land ;

(10) to remit the fees chargeable on applications for loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884) ;

(11) to remit the fee chargeable on an application made by a person to the Collector under Sub-section 2 of Section 42 of the Indian Stamp Act, 1899 (II of 1899) for the return to that person, or to the Registration officer who impounded it, of a document impounded and sent to the Collector by a Registration Officer ;

(12) to remit the fee chargeable on an application made

for transfer of a stock-note from one circle to another under paragraph 6 of Resolution No 2566, dated the 20th August, 1885;

(13) to remit the fees chargeable on the following documents namely:—

(a) copy of a charge framed under Section 210 of the Code of Criminal Procedure, 1898 (V of 1898), or of a translation thereof when the copy is given to an accused person

(b) copy of the evidence of supplementary witnesses after commitment when the copy is given under Section 219 of the said Code to an accused person

(c) copy or translation of a judgment in a case other than a summons case, and copy of the heads of the Judge's charge to the jury, when the copy or translation is given under Section 371 of the said code to an accused person

(d) copy or translation of the judgment in a summons case, when the accused person to whom the copy or translation is given under Section 371 of the said Code is in jail,

(e) copy of an order of maintenance when the copy is given under Section 490 of the said Code to the person in whose favour the order is made, or to the person to whom the allowance is to be paid,

(f) copy furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judge's charge to the jury or of any order, deposition or other part of the record, when the copy is not a copy which may be granted under any of the preceding Sub-clauses without the payment of a fee, but is a copy which, on its being applied for under Section 548 of the said Code, the Judge or Magistrate, for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment.

(g) copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court.

(h) copies of all documents which any such Advocate, Pleader or other person is required to take in

connection with any such trial or investigation, for the use of any Court or Magistrate or may consider necessary for the purpose of advising the Government in connection with any Criminal Proceedings.

(i) copies of judgments or depositions required by officers of the Police Department in the course of their duties

(14) to direct that the fee chargeable on an application to a Collector with respect either to liability to assessment, or to the amount or rate of an assessment under the Indian Income-tax Act, 1918 (VII of 1918), shall be limited to one anna ;

(15) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court or Public Office ,

(16) to direct that, if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted, except where otherwise expressly provided by the notification ,

(17) to remit the fee chargeable on an application for the grant of a license for the vend of stamp ;

(18) to direct that no Court-fee shall be charged on an application for the repayment of a fine or any portion of a fine the refund of which has been ordered by competent authority ;

(19) to remit the fees chargeable on application for copies of documents detailed in Clauses 4 and 13 supra ;

(20) to remit the duty chargeable in respect of Indian Probates, Letters of Administration or Succession Certificate on the share or other interest of a deceased member of a Company formed under the Indian Companies Act, 1913 (VII of 1913), provided that the said share or interest was registered in a branch register in the United Kingdom under the Indian Companies (Branch Register) Act, 1900 (IV of 1900) and that such member was at the date of his decease demiciled elsewhere than in India ;

(21) to remit the fees chargeable on applications presented to Officers of Land Revenue for the suspension or remission of revenue on the ground that a crop has not been sown or has failed ;

(22) to remit the fee chargeable on applications and petitions presented to a Collector or any Revenue Officer having jurisdiction equal or subordinate to a Collector for advice or assistance from the Agricultural Department of the Province ;

(23) to remit the fees payable under Schedule II upon applications for the grant or renewal of licences or duplicates granted or renewed under the said rules ;

(24) to remit the fees chargeable on application for the grant of licenses of the nature mentioned in Item 8 and 9 of Schedule II appended to the Indian Explosive Rules, 1914, to possess gun-powder, other explosives or detonators required *bona fide* for blasting purposes ;

(25) to remit as follows the fees on the property of any person subject to military law either under the Army Act (44 and 45 Victoria C 58), or under the Indian Army Act 1911 (VIII of 1911) who was killed or died of wounds inflicted, accident occuring or diseases contracted within three years before death while on active service in the war terminating on the 31st of August, 1921 —

(*a*) where the amount or value of property in respect of which the grant of Probate or Letters of Administration is made or which is specified in the certificate under the Succession Certificate Act, 1889, does not exceed Rs 50,000 to remit the whole of the fees leviable in respect of that property.

(*b*) where the said amount or value exceeds Rs. 50,000 to remit the whole of the said fees in respect of the first Rs 50,000 and

(*c*) where any property passes more than once in consequence of such deaths to remit in the case of second and subsequent successions, the whole of the said fees irrespective of the value or amount of such property ;

(26) to remit the fees chargeable on application for mutations of names in respect of the property of any person subject to military law either under Army Act (44 and 45 Vict, C 58) or under the Indian Army Act, 1911 (VIII of 1911) who was killed or died of wounds inflicted, accident occurring or diseases contracted within twelve months before death while on active service in the war terminating on the 31st of August, 1921 ;

(27) to remit the fees chargeable on applications presented to Officers of Land Revenue for the suspension or remission of loans under the Land Improvement Loans Act, 1883 (XIX of 1883) or the Agriculturists' Loans Act, 1884 (XII of 1884).

(28) to remit the fees chargeable on applications for the grant of licenses issued in accordance with the provisions of any rule made under Section 9 of the Indian Petroleum Act, 1899, (VIII of 1899) for the possession of dangerous petroleum for use on motor vehicle and for its transport thereon for the purpose of use therein ;

(29) to remit the fees chargeable on copies of decrees of Civil or Revenue Courts situate in the territories of His Highness the Gaekwar of Baroda forwarded to any Court in Bihar and Orissa for execution in pursuance of the provisions of Section 44 of the Civil Procedure Code, 1908 (V of 1908) ;

(30) to reduce the fee chargeable on application for the settlement of fair rents under Section 85 of the Chota Nagpur Tenancy Act, 1908, (Bengal Act VI of 1908) to the sum of eight annas for each tenant making or joining or joint in the application, a group of joint owners of tenancy being treated for the purpose of this clause as a single tenant ;

(31) to remit the fees chargeable on certified copies of entries in the record-of-rights furnished in accordance with any rules for the time being in force under the Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908) after the final publication of such records-of-rights under Section 83 (2) of that Act,

(32) to remit the fees chargeable on application or petition of objection referring to any entry made or proposed to be made in—

(a) a draft record-of-rights prepared under Chapter XII of the Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908).

(b) a draft record of prædial conditions prepared under Section 107 of that Act.

(c) a draft statement prepared or a tenant's khatian written up under Section III of the same Act.

(d) a draft record of landlord's privileged lands, prepared under Chapter XIV of the same Act,

(e) a draft record-of-rights and obligations prepared under Chapter XV of the same Act ;

Provided that such applications or petitions are presented :—

(i) in the case of the documents referred to in Clauses (a), (d) and (e) before the publication of the draft under Sub-section (1) of Section 83 of the said Act,

(ii) in the case of the documents referred to in Clause (b) before the publication of the draft under Sub-section (i) of Section 108 of the said Act, and

(iii) in the case of the documents referred to in Clause (c) before the publication of the draft under Clause 5 of Section 111 of the said Act.

(33) to reduce to the sum of eight annas the court fees in excess of eight annas chargeable on certified copies of entries in a record-of-rights of a village or a portion thereof maintained under the Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908)

(34) to reduce the fees chargeable under Clause (III of Article 17 or Schedule II of the Act on plaints relating to suits instituted in the Chota Nagpur Division under Section 87 (1), 111 (8), 120 (read with Section 87), 130 (1) and 252 (1) of the Chota Nagpur Tenancy Act, 1908 (Bengal Act VI of 1908) to the amount of *ad valorem* fee in cases where the amount of such fee would be less than 15 rupees,

(35) to remit the fees chargeable—

(*a*) on certified copies of entries in record-of-rights furnished in accordance with any rules for the time being in force, under the Orissa Tenancy Act, 1913 (Bihar and Orissa Act II of 1913), after the final publication of such record-of-rights under Section 116 (2) of that Act

(*b*) on any application for the deposit of rent in respect of which a fee is paid under Section 70 (2) of the Orissa Tenancy Act, 1913 (Bihar and Orissa Act II of 1913)

(*c*) on applications or petitions of objection referring to any entry made or proposed to be made in a draft record-of-rights prepared under Chapter XI of the Orissa Tenancy Act, 1913 (Bihar and Orissa Act II of 1913); provided that such applications or petitions are presented before the publication of such draft record under Section 116 (1) of the said Act.

(36) to reduce the fees chargeable under Clause (*iii*) of Article 17 of Schedule II of the Act on plaints relating to suits instituted under Section 130 of the Orissa Tenancy Act, 1913 (Bihar and Orissa Act II of 1913) to the amount of an *ad valorem* fee chargeable under Article I, Schedule I of the Act in cases where amount of such fee would be less than Rs 15.

(37) to reduce to the sum of eight annas the fees in excess of eight annas chargeable on certified copies of entries in a record-of-rights of a village or a portion thereof maintained under the Orissa Tenancy Act, 1913 (Bihar and Orissa Act II of 1913);

(38) to declare that the proper fee to be charged upon

application to deposit in any court, rent not exceeding the sum of fifteen rupees, shall be as follows:—

	Proper fee.
If the amount deposited does not exceed Rs. 2-8	One anna
If the amount deposited exceeds Rs 2-8 but does not exceed Rs 5 .	Two annas
If the amount deposited exceeds Rs. 5 but does not exceed Rs 10	Four annas
If the amount deposited exceeds Rs. 10 but does not exceed Rs. 15 .	Six annas

Provided that no fee shall be chargeable on an application to deposit rent in respect of which a fee is chargeable under rules framed under Sub-section (2) of Section 61 of the Bengal Tenancy Act, 1885 (VIII of 1885)

(39) To remit the fees chargeable on applications or petitions of objection referring to any entry made or proposed to be made in a draft record-of-rights prepared under Chapter 10 of the Bengal Tenancy Act, 1898 (Bengal Act, III of 1898); provided that such applications or petitions are presented before the publication of such draft record under section 193A, subsection (1) of the said Act.

(40) to remit the fees chargeable on certified copies of entries in record-of-rights furnished in accordance with any rules for the time being in force under the Bengal Tenancy Act 1885 (VIII of 1885) after the final publication of such record-of-rights under section 103A (2) of that Act;

(41) to remit the fees chargeable on copies of documents furnished by a District Magistrate to a pleader of the court to defend a pauper accused of murder,

(42) to reduce the fees chargeable under Clause (iii) of Article 17 of Schedule II of the Act on plaints relating to suits instituted under section 106 of the Bengal Tenancy Act, 1885 (VIII of 1885), to the amount of an *ad valorem* fee chargeable under Article I of Schedule I of the Act, in cases where the amount of such fee would be less than Rs. 15;

(43) to reduce to the sum of eight annas the court-fees in excess of eight annas chargeable on certified copies of entries in a record-of-rights of a village or a portion thereof maintained under the Bengal Tenancy Act, 1885 (VIII of 1885).

(44) to direct that when a record-of-rights is being prepared under Chapter X of the Bengal Tenancy Act, 1885, in pursuance of an order made otherwise than under section 101, clause (d) of the latter Act, and any application is made under sec-

tion 104, sub-section (2) of that Act for a settlement of rent the fee payable on such application shall not exceed the sum of eight annas for each tenant making or joined in such application.

(45) *to remit the fees chargeable on an application made to* a Magistrate under the Indian Motor Vehicles Act, 1914 (VIII of 1914), for the registration of a Motor Vehicle and for a license to drive it,

(46) to remit the fees chargeable on applications made to a Collector for exemption, refund or abatement of income-tax or super-tax under the Indian Income-tax Act, 1918 (VII of 1918) or Supertax Act 1920 (XIX of 1920)

APPENDIX D

Reductions and Remission of Court Fees in the Bombay Presidency.

The Government of Bombay Notification No. 590 dated 16th September 1921. Published in the Bombay Government Gazette, dated 22nd September 1921.

Secretariat, Fort, Bombay, 16th September 1921.

No 590.—In exercise of the powers conferred by Section 35 of the Court-fees Act, 1870 (VII of 1870), as amended by Act, XXXVIII of 1920, and in supersession of so much of all previous notifications under that section issued by the Governor-General-in-Council as relates to the reduction or remission of all or any of the fees mentioned in the First and Second Schedules to the said Act, in the territories under the administration of the Government of Bombay, the Governor in Council is pleased to make the following reductions and remissions of the fees mentioned in the First and Second Schedules to the said Act, namely —

(1) To remit the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper which has become spoiled or unfit for use, or is no longer required for use and on applications for renewal of stamped paper which has become spoiled or unfit for use ;

(2) to remit the fees chargeable on applications in writing, relating exclusively to the purchase of salt which is the property of the Government ;

(3) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court in such a form that the presiding Judge or officer, without summoning the Defendant, rejects it not for any substantial defect but on account of an entirely technical error in form only, and so as to leave the Plaintiff free to prosecute precisely the same case in another form against the same Defendant or Defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the Court is situated together with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstances above described, and that the value of the stamp should, in his opinion, be refunded ;

(4) to remit the fees chargeable on—

(a) copies of village settlement-records furnished to land-holders and cultivators during the currency or at the termination of settlement operations,

(b) lists of fields extracted from village settlement-records for the purpose of being filed with petitions of plaint in Settlement Courts

Provided that nothing in this clause shall apply to copies of judicial proceedings, or to copies of village settlement-records (other than lists of fields) extracted as aforesaid, which may be filed in any Court or Office ;

(5) to direct that the fee chargeable on appeals from orders under Section 47 of the Code of Civil Procedure, 1908, (V of 1908), shall be limited to the amounts chargeable under Article 11 of the Second Schedule

(6) to remit the fees chargeable on security-bonds for the keeping of the peace by, or good behaviour of, persons other than the executants ,

(7) to remit the fees chargeable under Articles 6, 7 and 9 of the First Schedule on copies furnished by Civil or Criminal Courts or Revenue Courts or Offices for the private use of persons applying for them:

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of Justice or received by any public officer ;

(8) to remit the fees chargeable, under paragraph 4 of clause (a) and paragraph 2 of clause (b) of Article 1 of the Second Schedule, on applications for orders for the payment of deposits in cases in which the deposit does not exceed Rs. 25 in amount

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the application ;

(9) to remit, with reference to clause (xi) of Section 19 of the Act, the fees chargeable on applications for leave to occupy under direct engagement with the Government land of which the revenue is settled, but not permanently, when made by persons who do not at the time of application hold the land ;

(10) to remit the fees chargeable on applications for loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884) ;

(11) to remit the fee chargeable on an application made by a person to the Collector under sub-section 2 of Section 42 o the Indian Stamp Act, 1899 (II of 1899), for the return to t

person, or to the Registration Officer who impounded it, of a document impounded and sent to the Collector by a Registration Officer;

(12) to remit the fees chargeable on the following documents, namely.—

(a) copy of a charge framed under section 210 of the Code of Criminal Procedure, 1898 (V of 1898), or of a translation thereof, when the copy is given to an accused person,

(b) copy of the evidence of supplementary witnesses after commitment when the copy is given under section 219 of the said Code to an accused person,

(c) copy or translation of a judgment in a case other than a summons case, and copy of the heads of the Judge's charge to the jury, when the copy or translation is given under Section 371 of the said Code to an accused person,

(d) copy or translation of the judgment in a summons case, when the accused person to whom the copy or translation is given under Section 371 of the said Code is in jail,

(e) copy of an order of maintenance, when the copy is given under Section 490 of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid,

(f) copy furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judge's charge to the jury or of any order, deposition or other part of the record, when the copy is not a copy which may be granted under any of the preceding sub-clauses without the payment of a fee, but is a copy which, on its being applied for under Section 548 of the said Code, the Judge or Magistrate, for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment;

(g) copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court;

(h) copies of all documents which any such Advocate, Pleader or other person is required to take in con-

nection with any such trial or investigation, for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connection with any criminal proceedings ;

(1) copies of judgments or depositions required by officers of the Police Department in the course of their duties ;

(13) to remit the fee chargeable on an application to a Collector, with respect either to liability to assessment or to the amount or rate of an assessment or for a refund of income tax under the Indian Income-tax Act, 1918 (VII of 1918) ;

(14) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court or public office ,

(15) to direct that, when a part of an estate paying annual revenue to the Government under a settlement which is not permanent is recorded in the Collector's register as separately assessed with such revenue, the value of the subject-matter of a suit for the possession of, or to enforce a right of pre-emption in respect of, a fractional share of that part shall, for the purposes of the computation of the amount of the fee chargeable in the suit, be deemed not to exceed five times such portion of the revenue separately assessed on that part as may be rateably payable in respect of the share ;

(16) to direct that, if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted, except where otherwise expressly provided by this notification ,

(17) to remit the fee chargeable on an application for the grant of a license for the vend of stamp ;

(18) to direct that no court-fee shall be charged on an application for the repayment of a fine or of any portion of a fine the refund of which has been ordered by competent authority ;

(19) to remit the fees chargeable on applications for copies of documents detailed in clauses 4 and 13 *supra ;*

(20) to remit the duty chargeable in respect of Indian Probates, Letters of Administration or Succession Certificates on the share or other interest of a deceased member of a company formed under the Indian Companies Act, 1913 (VII of 1913), provided that the said share or interest was registered in a Branch Register in the United Kingdom under the Indian Companies (Branch Registers) Act 1900 (IV of 1900), and that such member was at the date of his decease domiciled elsewhere than in India ;

(21) to remit the fees chargeable on applications to officers of land revenue for the suspension or

revenue on the ground that a crop has not been sown or has failed ;

(22) to remit the fee chargeable on applications and petitions presented to a Collector or any Revenue Officer having jurisdiction equal or subordinate to a Collector for advice or assistance from the agricultural Department of the Province,

(23) (a) to remit the fees payable under Schedule II upon applications for the grant or renewal of licenses or duplicates under the Indian Arms Rules, 1920 in respect of which a fee is payable under those Rules, and

(b) to reduce to one anna all fees exceeding one anna payable under Schedule II upon other applications relating to licenses or duplicates granted or renewed under the said rules ;

(24) to remit the fees chargeable on applications for the grant of licenses of the nature mentioned in items 8 and 9 of Schedule II appended to the Indian Explosives Rules, 1914, to possess gun-powder, other explosives or detonators required *bona fide* for blasting purposes ;

(25) to remit as follows the fees on the property of any person subject to military law either under the Army Act (44 and 45 Vict. C. 58) or under the Indian Army Act, 1911 (VIII of 1911), who is killed or dies of wounds inflicted, accident occurring or diseases contracted within three years before death while on active service in the present war —

(a) where the amount of or value of property in respect of which the Grant of Probate or Letters of Administration is made or which is specified in the certificate under the Succession Certificate Act, 1889, or in the certificate under Bombay Regulation No 8 of 1827, does not exceed Rs 50,000 to remit the whole of the fees leviable in respect of that property,

(b) where the said amount or value exceeds Rs 50,000 to remit the whole of the said fees in respect of the first Rs. 50,000, and

(c) where any property passes more than once in consequence of such deaths to remit, in the case of of second and subsequent successions, the whole of the said fees irrespective of the value or amount of such property ;

(26) to remit the fees chargeable on applications for mutations of names in respect of the property of any person subject to military law either under the Army Act (44 and 45 Vict.,

C. 58) or under the Indian Army Act, 1911 (VIII of 1911), who is killed or dies of wounds inflicted, accident occurring or disease contracted within twelve months before death while on active service in the present war ,

(27) to remit the fees chargeable on applications presented to officers of Land Revenue for the suspension or remission of loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884) ;

(28) to remit the fees chargeable on applications for the grant of licenses issued in accordance with the provisions of any rule made under Section 9 of the Indian Petroleum Act, 1899 (VIII of 1899), for the possession of dangerous petroleum for use on motor vehicles and for its transport thereon for the purpose of use therein ,

(29) to remit the fees chargeable on copies of decrees of Civil or Revenue Courts situate in the territories of His Highness the Gaekwar of Baroda forwarded to any Court in British India for execution in pursuance of the provisions of Section 44 of the Civil Procedure Code, 1908 (V of 1908) ,

(30) to remit the fees chargeable under the Second Schedule on agreements required by Rules 37, 43 and 52 of the Land Revenue Code Rules, 1921 ;

(31) to reduce to a uniform rate of four annas per copy the fee chargeable under Article 7 of the First Schedule on copies of decrees or orders having the force of a decree issued by Mamlatdars under the Mamlatdars' Courts Act, 1906 (Bom. II of 1906) ,

(32) to remit the fees chargeable under Article 1 of the Second Schedul [illegible] tor or other Revenue Officer [illegible] Authority, by any of the [illegible] being the eldest sons or representatives of the *ex*-Amirs of Sindh and Sardars of note —

District	Number and Names of Pensioners.
Hyderabad .	(1) His Highness Mir Nur Muhammad Khan, son of Mir Hussain Ali Khan, Talpur,
Thar Parkar	(2) His Highness Mir Fateh Khan, son of Mir Sher Mahomed Khan, Talpur,
Sukkur	(3) Mir Fazl Hussain Khan, son of Mir Sohrab Khan, Talpur ;

(33) to remit the fees chargeable in respect of the documents specified in the First or Second Schedule in the case of

suits instituted before village-munsifs under Chapter V of the Dekkhan Agriculturists' Relief Act, 1879 (XVII of 1879);

(34) to remit the fees chargeable on copies of documents furnished by a Court of Session or the High Court, or by the Sadar Court in Sind, to a pleater appointed by the Court to defend a person accused of murder;

(35) to remit the fees chargeable under Article 1, clauses (b) and (c) of Schedule II on applications made to a Collector, or other Revenue Officer, or to any Chief Controlling Revenue or Executive Authority, for premission to cut and remove jungle wood for fuel, or thorns for fencing, from lands which are unalienated and unoccupied within the meaning of the Bombay Land Revenue Code, 1879;

(36) to remit the fees chargeable on certified copies on applications for certified copies of entries in record-of-rights maintained under the Bombay Land Revenue Code, 1879 (Bom. V of 1879), and on applications for such copies when required for filing in Court under Section 135-H of the Act;

(37) to remit the fees chargeable on certified copies of extracts from entries in record-of-rights maintained under the Bombay Land Revenue Code, 1879 (Bom. V of 1879), when such copies are attached to applications for the execution of Civil Court decrees;

(38) to remit the fees chargeable (*i*) on applications made to the excise officer-in-charge of the distillery or warehouse for the issue of a permit for the transport of country spirits and (*ii*) on applications made by the licensees of intoxicating drugs shops for transport permits of duty-paid drugs;

(39) to remit the fee chargeable on applications made by the licensees of opium shops or by farmers of the monopoly districts for transport permits;

(40) to remit the fees chargeable on applications for the grant of licenses to tap toddy trees for domestic consumption in the Panch Mahals District;

(41) to remit the fees chargeable on applications made to village officers for copies of entries in the record-of-rights registers under Section 135-K of the Bombay Land Revenue Code, 1879 (Bom V of 1879).

APPENDIX E

BURMA.

Reductions and Remissions.

Under Section 35 of the Court Fees Act

No 41 In exercise of the powers conferred by Section 35 of the Court Fees Act, 1870, as amended by the Devolution Act, 1920, and in supersession of the Notifications set forth in the schedule appended hereto, the Local Government is pleased to remit or reduce, as the case may be, in the whole of Burma the fees mentioned in the first and second schedule of the said Act to the extent detailed below —

I If the amount of the fee chargeable in any case involves a fraction of an anna, that fraction shall be remitted

II No fee shall be chargeable in respect of the following applications :—

A —*General*

1 Applications requesting that an enclosed petition may be forwarded to the person to whom it is addressed.

2 Applications made on behalf of Government by a Government officer or servant

3 Applications for the return of documents filed in any Court or public office.

4. Applications for copies of documents in respect of which copies no court-fee is chargeable.

5 Applications for repayment of deposits or payment of any sum the payment of which has been duly sanctioned by competent authority.

6 Applications for rectification in errors of assessment.

7. Applications for the advice or assistance of the Agricultural Department.

B —*Specific Enactments.*

1. *Arms Act.*—Applications for the grant or renewal of arms licenses or otherwise relating to such licenses.

2 *Explosives Act* —Applications for licenses to possess gun-powder, other explosives or detonators required *bona fide* for blasting purposes.

3. *Government Loans Enactments* Applications for the grant, suspension or, remission of loans under the Land Improvement Loans Act, 1883, or the Agriculturists' Loans Act, 1884.

4. *Income-tax Act.*—Applications with respect either to liability to assessment or to the amount or rate of an assessment or for a refund of income-tax.

5 *Land Revenue Enactments* —

(*a*) Applications for permission to occupy Government land for purposes of cultivation.

(*b*) Applications for the suspension or remission of land revenue on the ground that a crop has not been sown or has failed.

(*c*) Applications for mutation of names in respect of the property of any person subject to military law either under Army Act, 1881 (44 and 45 Vict., C 58), or under the Indian Army Act, 1911, who is killed or dies of wounds inflicted, accident occurring or diseases contracted within twelve months before death while on active service in the Great War of 1914-18.

6 *Petroleum Act.*—Applications for the grant of licenses for the possession of dangerous petroleum for use on motor vehicles and its transport thereon for the purpose of use therein.

7. *Salt Act* —Applications to purchase salt belonging to Government.

8. *Stamp and Court Fees Acts.*—Applications for—

(*a*) refund of the amount paid to Government for stamped paper which has become spolied or unfit for use or is no longer required for use ,

(*b*) renewal of stamped paper which has become spoiled or unfit for use ;

(*c*) return of documents impounded by Collector [Indian Stamp Act, 1899, Section 42 (2)] ;

(*d*) *a stamp vendor's license.*

III. The fee chargeable on appeals from orders under Section 47 of the Code of Civil Procedure, 1908, shall be limited to amounts chargeable under Article 11 of the Second Schedule.

IV. No court fee shall be chargeable upon copies in the following cases :—

(*a*) Copies of proceedings or orders supplied to applicants requiring such copies for their private use only, and not such presented to any public court or officer.

(*b*) Copies of proceedings or orders supplied to Government officers or servants in the course of their duties.

(c) Copies of documents in connection with any legal proceedings which are required by or for any person duly retained on behalf of or at the expense of Government to assist in such legal proceedings.

(d) Copies directed to be furnished free of cost under the Criminal Procedure Code

(e) Copies of decree of Civil or Revenue Courts situated in the territories of His Highness the Gaekwar of Baroda forwarded to any court in British India for execution in pursuance of the provisions of Section 44 of the Civil Procedure Code, 1908.

(f) Certified copies of entries in settlement or supplementary survey maps and registers

(g) Certified copies of such entries provided they relate to land standing in the name of, or occupied by, the applicant.

V *Plaints* —(a) When a plaint disclosing a reasonable case on the merits is presented to any Civil Court or Revenue Officer in such a form that the Presiding Judge or Officer without summoning the defendant rejects it, not for any substantial defect, but on account of an entirely technical error in form only and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant, the value of the stamp on the plaint shall be refunded on its presentation to the Collector of the district with a certificate from the Judge or Officer who rejected it that it was rejected in the circumstances above described and that in his opinion the value of the stamp should be refunded

(b) The value of the subject matter of a suit for the possession of or to enforce a right of pre-emption in a fractional share of a holding assessed separately to land revenue shall, for the purpose of computing the amount of the fees chargeable in the suit, be deemed not to exceed five times such portion of the revenue assessed on the holding as may be payable rateably in respect of the share

VI *Probates and Letters of Administration.*—

(a) No fee shall be chargeable in respect of Indian Probates, Letters of Administration or Succession Certificates in the share or other interest of a deceased member of a company formed under the Indian Companies Act, 1913, provided that the said share or interest was registered in a branch registered in the United Kingdom under the Indian Companies, (Branch Register) Act, 1900, and that such member was at the date of his decease domiciled elsewhere than in India.

(b) The fee chargeable on the property of any person subject to military law either under the Army Act (44 and 45 Vict., C 58) or under the Indian Army Act, 1911, who is killed or dies of wounds inflicted, accident occurring or disease contracted

within three years before death while on active service in the Great War of 1915-18 shall be remitted to the following extent:—

(i) Where the amount of or value of property in respect of which the grant of probate or letters of administration is made or which is specified in the certificate under the Succession Certificate Act, 1889, or in the Certificate under Bombay Regulation No. 8 of 1827, does not exceed Rs. 50,000—to remit the whole of the fees leviable in respect of that property ;

(ii) where the said amount or value exceeds Rs. 50,000—to remit the whole of the said fees in respect of the first Rs. 50,000 ; and

(iii) where any property passes more than once in consequence of such deaths—to remit in the case of second and subsequent successions, the whole of the said fees irrespective of the value or amount of such property.

VII No fee shall be chargeable in respect of any bond prescribed by the Criminal Procedure Code.

APPENDIX F

Reduction and Remission of Court Fees in Central Provinces.

List of reductions and remissions authorised by the Governor in Council under Section 35 of the Court Fees Act, 1870.

Dated the 22nd February, 1922 for Central Provinces

No 79-292-XI —In exercise of the powers conferred by Section 35 of the Court Fees Act, 1870 (VII of 1870), as amended by the Devolution Act, 1920 (XXXVIII of 1920), and in supersession of all previous notifications under the said Section, the Governor in Council is pleased to make the following reductions and remissions in the fees chargeable under the First and Second Schedules of the Act, namely —

Note.—*The undermentioned rulings apply to Berar also see Central Provinces Gazette, Notification No. 79-292-XI, dated the 22nd February 1922, for Berar*

(1) to direct that, if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted, except where otherwise expressly provided by this notification,

(2) to remit the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper which has become spoiled or unfit for use, or is no longer required for use and on applications for renewal of stamped paper which has become spoiled or unfit for use;

(3) to remit the fees chargeable on applications in writing, relating exclusively to the purchase of salt which is the property of the Government;

(4) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any Civil Court or Revenue Officer in such a form that the presiding Judge or Officer, without summoning the defendant, rejects it not for any substantial defect but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value [illegible]
on presentation of an [illegible]
a certificate from the [illegible]
that it was rejected under the circumstances above descri

and that the value of the stamp should, in his opinion, be refunded ;

(5) to remit the fees chargeable on—

(a) copies of village settlement-records furnished to land holders and cultivators during the currency or at the termination of Settlement operations.

(b) lists of fields extracted from village settlement-records for the purpose of being filed with petitions to Settlement Officers.

Provided that nothing in this clause shall apply to copies of judicial proceedings, or to copies of village settlement-records (other than lists of fields) extracted as aforesaid, which may be filed in any court or office ;

(6) to direct that the fee chargeable on appeals from orders under Section 47 of the Code of Civil Procedure, 1908 (Act V of 1908), shall be limited to the amounts chargeable under article 11 of the Second Schedule ;

(7) to remit the fees chargeable on security-bonds for the keeping of the peace by, or good behaviour of, persons other than the executants ;

(8) to remit the fee payable under article 1, clause (c), of the Second Schedule on an application or petition presented to the Local Government, when the application or petition is accompanied by a petition to the Government of India and contains merely a request that the petition may be forwarded to the Government of India ;

(9) to remit the fees chargeable under articles 6, 7 and 9 of the First Schedule on copies furnished by Civil or Criminal Courts or Revenue officers for the private use of persons applying for them ;

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any Court of Justice or received by any public officer ;

(10) to remit the fees chargeable, under paragraph 4 of clause (a) and paragraph 2 of clause (b) of article 1 of the Second Schedule on applications for orders for the payment of deposits in cases in which the deposit does not exceed Rs. 25 in amount ;

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the application ;

(11) to remit, with reference to clause xi section 19 of the Act, the fees chargeable on applications for leave to occupy under direct engagement with the Government land of which

the revenue is settled, but not permanently, when made by persons who do not at the time of application hold the land ;

(12) to remit the fees chargeable on applications for loans under the Land Improvement Loans Act ,1883 (XIX of 1883), or the agriculturists' Loans Act, 1884 (XII of 1884) ,

(13) to remit the fees chargeable on applications presented to officers of Land Revenue for the suspension or remission of loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884) ;

(14) to remit the fee chargeable on an application made by a person to the Collector under sub-section 2 of section 412 of the Indian Stamp Act, 1899 (II of 1899) for the return to that *person, or to the Registration officer who impounded it,* of a document impounded and sent to the Collector by a Registration officer ,

(15) to remit the fees chargeable on the following documents, namely —

(*a*) copy of a charge framed under section 210 of the Code of Criminal Procedure, 1898 (V of 1898), or of a translation thereof, when the copy is given to an accused person,

(*b*) copy of the evidence of supplementary witnesses after commitment when the copy is given under section 219 of the said Code to an accused person,

(*c*) copy or translation of a judgment in a case other than a summons case, *and copy of the heads of the Judge's charge to the jury*, when the copy or translation is given under section 371 of the said Code to an accused person,

(*d*) copy or translation of the judgment in a summons case when the accused person to whom the copy or translation is given under section 371 of the said Code is in jail,

(*e*) copy of an order of maintenance, when the copy is given under section 490 of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid,

(*f*) copy furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judge's charge to the jury or of any order, deposition or other part of the record. when the copy is not a copy which may be granted under any of the preceding sub-clauses without the payment of a fee, but is a copy which, on its being applied for under section 548 of the said Code, the Judge or

Magistrate, for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment,

(*g*) copies of all documents furnished under the orders of any Court or Magistrate to any Government Advocate or Pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court,

(*h*) copies of all documents which any such Advocate, Pleader or other person is required to take in connection with any such trial or investigation, for the use of any Court or Magistrate, or may consider necessary for the purpose of advising the Government in connection with any criminal proceedings.

(*i*) copies of judgments or depositions required by officers of the Police Department in the course of their duties ;

(16) to direct that the fee chargeable on an application to a Collector with respect either to liability to assessment or to the amount or rate of an assessment under the Indian Income-tax Act, 1918 (VII of 1918), shall be limited to one anna ;

(17) to remit fee chargeable on an application to a Collector for exemption, refund or abatement of income-tax under the Indian Income-tax Act, 1918 (VII of 1918) ;

(18) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any Court or public office ;

(19) to direct that, when a part of an estate paying annual revenue to the Government under a settlement which is not permanent is recorded in the Collector's register as separately assessed with such revenue, the value of the subject-matter of a suit for the possession of, or to enforce a right of pre-emption in respect of, a fractional share of that shall, for the purposes of the computation of the amount of the fee chargeable in the suit, be deemed not to exceed five times such portion of the revenue separately assessed on that part as may be rateably payable in respect of the share ;

(20) *to remit the fee chargeable on an application for the* grant of a license for the vend of stamps ;

(21) to direct that no court-fee shall be charged on an application for the re-payment of a fine or of any portion of a fine the refund of which has been ordered by competent authority ;

(22) to remit the fees chargeable on applications for copies, of documents detailed in clauses 4 and 13 *supra*;

(23) to remit the duty chargeable in respect of Indian Probates, Letters of Administration or Succession Certificates on the share or other interest of a deceased member of a company formed under the Indian Companies Act, 1913 (VII of 1913), provided that the said share or interest was registered in a branch register in the United Kingdom under the Indian Companies (Branch Registers) Act, 1900 (IV of 1900), and that such member was at the date of his decease domiciled elsewhere than in India;

(24) to remit the fees chargeable on applications presented to officers of land revenue for the suspension or remission of revenue on the ground that a crop has not been sown or has failed;

(25) to remit the fee chargeable on applications and petitions presented to a Collector or any revenue officer having jurisdiction equal or subordinate to a Collector for advice or assistance from the Agricultural Department of the Province;

(26) (*a*) to remit the fees payable under Schedule II upon applications for the grant or renewal of licences or duplicates under the Indian Arms Rules, 1902, in respect of which a fee is payable under those Rules, and

(*b*) to reduce to one anna all fees exceeding one anna payable under Schedule II upon other applications relating to licenses or duplicates granted or renewed under the said rules;

(27) to remit the fees chargeable on applications to the grant of licences of the nature mentioned in items 8 and 9 of Schedule II appended to the Indian Explosives Rules 1914, to possess gun-powder, other explosives or detonators required *bona fide* for blasting purposes;

(28) to remit as follows the fees on the property of any person subject to military law either under the Army Act (44 and 46 Victoria, C. 58) or under the Indian Army Act, 1911 (VIII of 1911), who is killed or dies of wounds inflicted, accident occuring or diseases contracted within three years before death while on active service in the present war:—

(*a*) where the amount or value of property in respect of which the grant of probate or letters of administration is made or which is specified in the certificate under the Succession Certificate Act, 1889 (VII of 1889), does not exceed Rs. 50,000 to remit the whole of the fees leviable in respect of that property.

(*b*) where the said amount or value exceeds Rs. 50,000 to remit the whole of the said fees in respect of the first Rs. 50,000 ; and

(*c*) where any property passes more than once in consequence of such deaths to remit in the case of second and subsequent successions, the whole of the said fees irrespective of the value or amount of such property ;

(29) to remit the fees chargeable on applications for mutations of names in respect of the property of any person subject to military law either under the Army Act [44 and 45 Vict., C. 58] or under the Indian Army Act, 1911 (VIII of 1911), who is killed, or dies of wounds inflicted, accident occuring or diseases contracted within twelve months before death while on active service in the present war ;

(30) to remit the fees chargeable on applications for the grant of licenses issued in accordance with the provisions of any rule made under section 9 of the Indian Petroleum Act, 1899 (VIII of 1899) for the possession of dangerous petroleum for use on motor vehicles and for its transport thereon for the purpose of use therein ;

(31) to remit the fees chargeable on copies of decrees of Civil or Revenue courts situate in the territories of His Highness the Gaekwar of Baroda forwarded to any court in the Central Provinces for execution in pursuance of the provisions of section 44 of the Civil Procedure Code 1908 (V of 1908) ;

(32) to remit the fees chargeable on applications presented to courts with reference to Rule 2, Order XXI, First Schedule, Code of Civil Procedure, 1908 (Act V of 1908), in relation to awards made in the course of conciliation proceedings held with the sanction of the Local Government ;

(33) to remit the fee chargeable on copies of documents furnished by a District Magistrate, a Sessions Judge or the Registrar of the Judicial Commissioner's Court, to a counsel engaged by Government to appear in defence of a pauper accused.

APPENDIX G

Reductions and Remissions by Madras Government.

Under Sec 35

No 358—Under section 35 of the Court-fees Act 1870 (VII of 1870), as amended by section 4 of Act XXXVIII of 1920 and in supersession of all previous notifications on the subject, it is hereby notified that, in exercise of the power to reduce or remit in the Presidency of Fort St George, all or any of the fees mentioned in the First and Second Schedules to the said Act, the Governor in Council has been pleased to make the reductions and remissions hereinafter set forth, namely—

(1) to remit the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper which has become spoiled or unfit for use or is no longer required for use and on applications for renewal of stamped paper which has become spoiled or unfit for use ;

(2) to remit the fees chargeable on applications in writing, relating exclusively to the purchase of salt which is the property of the Government ;

(3) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any civil or revenue Court in such a form that the presiding judge or officer, without summoning the defendant, rejects it not for any substantial defect but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the court is situated, together with a certificate from the judge or officer who rejected the plaint that it was rejected under the circumstances above described, and that the value of the stamp should in his opinion, be refunded ;

(4) to remit the fees chargeable on—

(*a*) copies of village settlement records furnished to landholders and cultivators during the currency or at the termination of settlement operations,

(*b*) lists of fields extracted from village settlement records for the purposes of being filed with petitions or plaint in settlement courts ;

Provided that nothing in this clause shall apply to copies of judicial proceedings, or to copies of village settlement records, (other than lists of fields) extracted as aforesaid which may be filed in any court or office ;

(5) *to direct that the fee chargeable on appeals from orders* under section 47 of the Code of Civil Procedure, 1908 (Act V of 1908) shall be limited to the amounts chargeable under article 11 of the Second Schedule ;

(6) to remit the fees chargeable on security bonds for the keeping of the peace by, or good behaviour of, persons, other than the executants ;

(7) to remit the fees chargeable under articles 6, 7 and 9 of the First Schedule on copies furnished by civil or criminal courts or revenue courts or offices for the private use of persons applying for them ;

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any court of justice or received by any public-officer ;

(8) to remit the fees chareable, under paragraph 4 of clause (*a*) and paragraph 2 of clause (*b*) of article 1 of the Second Schedule, on applications for orders for the payment of deposits in cases in which the deposit does not exceed Rs. 25 in amount ;

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the application ,

(9) to remit, with reference to clause (xi) of section 19 of the Act, the fees chargeable on applications for leave to occupy under direct engagement with the Government land of which the revenue is settled, but not permanently when made by persons who do not at the time of application hold the land ;

(10) to remit the fee chargeable on application for loans under the Land Improvement Loans Act, 1883 (XIX of 1883) or the Agriculturists Loans Act, 1884 (XII of 1884) ;

(11) to remit the fee chargeable on an application made by a person to the Collector under sub-section (2) of section 42 of the Indian Stamp Act, 1899 (II of 1899) for the return to that person, or to the Registration officer who impounded *it* of a document impounded and sent to the Collector by a Registration officer ,

(12) to remit the fees chargeable on the following documents namely —

(*a*) copy of a charge framed under section 210 of the Code of Criminal Procedure, 1898 (V of 1898), or of translation thereof, when the copy is given to an accused person,

(b) copy of the evidence of supplementary witnesses after commitment when the copy is given under section 210 of the said Code to an accused person,

(c) copy or translation of a judgment in a case other than a summons case, and copy of the heads of the judge's charge to the jury when the copy or translation is given under section 371 of the said Code to an accused person,

(d) copy or translation of the judgment in a summons case, when the accused person to whom the copy or translation is given under section 371 of the said Code is in jail,

(e) copy of an order of maintenance, when the copy is given under section 490 of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid.

(f) copy furnished to any person affected by a judgment or order passed by a Criminal Court, of the Judge's charge to the jury or of any order, deposition or other part of the record, when the copy is not a copy which may be granted under any of the preceding sub-clauses without the payment of a fee, but is a copy which on its being applied for under section 548 of the said Code the Judge or Magistrate, for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment,

(g) copies of all documents furnished under the orders of any court or Magistrate to any Government Advocate or Pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court,

(h) copies of all documents which any such Advocate, Pleader or other person is required to take in connection with any such trial or investigation, for the use of any court or Magistrate, or may consider necessary for the purpose of advising the Government in connexion with any criminal case,

(i) copies of judgments or depositions required by officer of the Police Department in the course of their duties:

(13) to remit the fee chargeable on an application to a Collector for exemption, refund or abatement of income-tax ;

(14) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any court or public office ;

(15) to direct that, when a part of an estate paying annual revenue to the Government under a settlement which is not permanent is recorded in the Collector's register as separately assessed with such revenue, the value of the subject matter of a suit for the possession of, or to enforce a right of preemption in respect of, a fractional share of that part shall, for the purpose of the computation of the amount of the fee chargeable in the suit, be deemed not to exceed five times such portion of the revenue separately assessed on that part as may be rateably payable in respect of the share ;

(16) to direct that, if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted, except where otherwise expressly provided by this notification ;

(17) to remit the fee chargeable on an application for the grant of a license for the vend of stamp ;

(18) to direct that no court-fee shall be charged on an application for the payment of a fine or of any portion of a fine the refund of which has been ordered by competent authority ;

(19) to remit the fees chargeable on application for copies of documents detailed in clauses 4 and 12 *supra* ;

(20) to remit the duty chargeable in respect of Indian Probates, Letters of Administration or Succession Certificates on the share or other interest of a deceased member of a company formed under the Indian Companies Act, (VII of 1913) ; provided that the said share or interest was registered in a branch register in the United Kingdom under the Indian Companies (Branch Registers) Act, 1900 (IV of 1900) and that such member was at the date of his decease domiciled elsewhere than in India ,

(21) to remit the fees chargeable on applications presented to officers of land revenue for the suspension or remission of revenue on the ground that a crop has not been sown or has failed ;

(22) to remit the fee chargeable on application and petitions presented to a Collector or any Revenue officer having jurisdiction equal or subordinate to a Collector for advice or assistance from the Agricultural Department of the province ;

(23) (*a*) to remit the fees payable under Schedule II upon applications for the grant or renewal of license or duplicates under the Indian Arms Rules, 1920, in

respect of which a fee is payable under those Rules, and

(b) to reduce to one anna all fees exceeding one anna payable, under Schedule II upon other applications relating to license or duplicates granted or renewed under the said rules

(24) to remit the fees chargeable on applications for the grant of license of the nature mentioned in items 8 and 9 of Schedule II appended to the Indian Explosive Rules, 1914, to possess gun-powder, other explosive or detonators required *bona fide* for blasting purposes

(25) to remit the fees chargeable on applications presented to officers of Land Revenue for the suspension or remission of loans under the Land Improvement Loans Act, 1883 (XIX of 1883) or the Agriculturists' Loans Act (XII of 1884).

(26) to remit the fees chargeable on applications for the grant of licenses issued in accordance with the provision of any rule under section 9 of the Indian Petroleum Act, 1899 (VII of 1899) for the possession of dangerous petroleum for use on motor-vehicles and for its transport thereon for the purpose of use therein ,

(27) to remit the fees chargeable on copies of decrees of civil or revenue courts situate in the territories of His Highness the Gaekwar of Baroda forwarded to any court in the Presidency of Fort St George for execution in pursuance of the provisions of section 44 of the Civil Procedure Code, 1908 (V of 1908) ;

(28) to direct the fee chargeable on the following documents filed in claims preferred under the Madras Hereditary Village Offices Act, 1895 (Madras Act III of 1895) shall be limited to the sum specified below against each, namely:—

plaint, petition for execution or memorandum of appeal to a Collector—eight annas ;

memorandum of appeal to the Board of Revenue—two rupees ,

(29) to remit the fees chargeable (a) on copies of judgment, decrees or orders passed on ; claims preferred under the Madras Hereditary Village Offices Act, 1895 (Madras Act III of 1895) and (b) on applications filed by either party in the course of the trial of suits or appeals or in the course of execution of decrees under the said Act ;

(30) to reduce the fees chargeable in suits by Government ryots, for the recovery of land sold for arrears of revenue, to the amount which would be chargeable if the value of the subject matter were only the rent of the land payable for the year next before the date of presentation of the plaint ;

(31) to remit the fees chargeable on applications made by toddy-drawers and shop-keepers for the grant of licenses permitting them or their servants to draw toddy from cocoanut and other palms;

(32) to remit the fees chargeable on all communication made under Chapter II of the Madras Proprietary Estate Village Service Act, 1894 (Madras Act II of 1894) by a proprietor to any Revenue Officer relating to the appointment and control of village officers;

(33) to remit the fees chargeable on the following applications made by cultivators of the hemp plant (*Cannabis Sativa or Indica*) in the Madras Presidency:—

(1) Application for a licence to cultivate the hemp plant (Cannabis Sativa or Indica);
(2) Application for permission to harvest a crop of hemp plant and manufacture of intoxicating drugs therefrom; and
(3) Application for a permit to transport intoxicating drugs extracted from the hemp plant.

(34) to remit the fee chargeable on applications made by distillers and Warehouse-keepers in the Madras Presidency to the Excise Officer in charge of the distillery or warehouse for the issue of a permit for the transport of country spirit;

(35) to remit the fees chargeable in respect of plaints in suits instituted before the Collector under Sections 55, 56, 95, 112, 144 and 160 of the Madras Estates Land Act, 1908 (Madras Act I of 1908) and in respect of objection and petitions presented to the revenue officer under Section 166 (*i*) of the same Act;

(36) to remit the fees chargeable on applications, petitions and copies which are filed, exhibited or recorded in or received or furnished by, village Court constituted under the Madras Village Courts Act, 1889 (Madras Act I of 1889) as amended by Madras Act II of 1920;

(37) to remit the fees chargeable on applications for transfer of registry in the revenue accounts in respect of ryotwari holdings in the Madras Presidency;

(38) to remit the fees chargeable on applications for transfer of registry in the revenue accounts in respect of ryotwari holdings in the Madras Presidency;

No 359. Under Section 35 of the Court-fee Act, 1870 (VII of 1870), as amended by Section 4 of Act XXXVIII 1920 and in supersession of all previous notifications on the subject it is hereby notified that, in exercise of the power to reduce or remit in the Presidency of Fort St. George all or any of the fees mentioned in the First and Second Schedules to the said

Act, the Governor in Council has been pleased to make the reductions and remissions hereinafter set forth, namely,

(39) to remit as follows the fees on the property of any person subject to Military Law either under the Army Act (44 and 45 Victoria C 58) or under the Indian Army Act, 1911 (VIII of 1911) who is killed or dies of wounds inflicted, accident occurring or diseases contracted within three years before death while on active service in the present war:—

(a) where the amount of or value of property in respect of which the grant of probate or letters of administration is made or which is specified in the certificate under the Succession Certificate Act, 1889, or in the certificate under Madras Regulation No 8 of 1827 does not exceed Rs 50,000, to remit the whole of the fees leviable in respect of property.

(b) where the said amount or value exceeds Rs 50,000 to remit the whole of the said fees in respect of the first Rs. 50,000 and

(c) where any property passes more than once in consequence of such deaths to remit in the case of second and subsequent successions, the whole of the said fees irrespective of the value or amount of such property.

(40) to remit the fees chargeable on applications for mutations of names in respect of the property of any person subject to military law either under the Army Act (44 and 45 Victoria, C 58) or under the Indian Army Act, 1911 (VII of 1911) who is killed or dies of wounds inflicted, accident occurring or diseases contracted within twelve months before death while on active service in the present war.

APPENDIX H

Reductions and Remissions of Court Fees in the United Provinces.

U. P. Govt. *notification No 560/VII-419* dated the 3rd May, 1921 (Judl Civil department).

69 Under section 35 of the Court-fees Act 1870 (VII of 1870), as amended by the Devolution Act, No. XXXVIII of 1920, and in supersession of all previous notifications under that section, it is hereby notified that, in exercise of the power to reduce or remit, in the whole or in any part of the territories under his administration, all or any of the fees mentioned in the first and second schedule to the said Act, the Governor in Council has been pleased in respect of the whole of the territories under his administration to make the reductions and remissions hereinafter set forth, namely—

(1) to remit the fees chargeable on applications presented to a Collector for refund of the amount paid to the Government for stamped paper which has become spoiled or unfit for use, or is no longer required for use, and on applications for renewal of stamped paper which has become spoiled or unfit for use ;

(2) to remit the fees chargeable on applications in writing relating exclusively to the purchase of salt which is the property of the Government ;

(3) to direct that, when a plaint disclosing a reasonable case on the merits is presented to any civil or revenue court in such a form that the presiding Judge or officer, without summoning the defendant, rejects it not for any substantial defect, but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the plaint shall be refunded on presentation of an application to the Collector of the district in which the court is situated, together with a certificate from the Judge or officer who rejected the plaint that it was rejected under the circumstances above described, and that the value of the stamp should, in his opinion be refunded ;

(4) to remit the fees chargeable on—

(a) copies of village settlement records furnished to

landholders and cultivators during the currency or at the termination of settlement operations,

(b) lists of fields extracted from village settlement records *for the purpose of being filed with petitions of plaint in settlement courts*.

Provided that nothing in this clause shall apply to copies of judicial proceedings, or to copies of village settlement records (other than lists of fields) extracted as aforesaid which may be filed in any court or office ,

(5) to direct that the fee chargeable on appeals from orders under section 47 of the Code of Civil Procedure, 1908 (Act V of 1908) shall be limited to the amounts chargeable under article 11 of the second schedule ,

(6) to remit the fees chargeable on security bonds for the keeping of the peace by, or good behaviour of, persons other than the executants ,

(7) to remit the fees chargeable under articles 6 7 and 9 of the first schedule on copies furnished by civil or criminal courts or revenue courts or offices for the private use of persons applying for them

Provided that nothing in this clause shall apply to copies when filed, exhibited or recorded in any court of justice or received by any public officer ,

(8) to remit the fees chargeable under paragraph 4 of clause (a) and paragraph 2 of clause (b) or article 1 of the second schedule, on applications for orders for the payment of deposits in cases in which the deposit does not exceed Rs. 25 in amount·

Provided that the application is made within three months of the date on which the deposit first became payable to the party making the application ;

(9) to remit, with reference to clause XI of section 19 of the Act, the fees chargeable on applications for leave to occupy under direct engagement with the Government land of which the revenue is settled, but not permanently, when made by persons who do not at the time of application hold the land ;

(10) to remit the fees chargeable on applications for loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884) ;

(11) to remit the fee chargeable on application made by a person to the Collector under sub-section 2 of section 42 of the Indian Stamp Act, 1899 (II of 1899), for the return to that person or to the registration officer who impounded it, of document impounded and sent to the Collector by a i tion officer ;

(12) to remit the fees chargeable on the following documents, namely,—

(a) copy of a charge framed under section 210 of the Code of Criminal Procedure, 1898 (V or 1898), or of a translation thereof, when the copy is given to an accused person ;

(b) copy of the evidence of supplementary witnesses after commitment, when the copy is given under section 219 of the said Code to an accused person,

(c) copy or translation of a judgment in a case other than a summons-case, and copy of the heads of the Judge's charge to the jury, when the copy or translation is given under Section 371 of the said Code to an accused person.

(d) copy of translation of the judgment in a summons-case, when the accused person whom the copy or translation is given under Section 371 of the said Code is in jail ;

(e) copy of an order of maintenance, when the copy is given under Section 490 of the said Code to the person in whose favour the order is made, or to his guardian, if any, or to the person to whom the allowance is to be paid ;

(f) copy furnished to any person affected by a judgment or order passed by a criminal court of the Judge's charge to the jury, or of any order, deposition or other part of the record, when the copy is not a copy which may be granted under any of the preceding sub-clauses without the payment of a fee, but is a copy which, on its being applied for under section 548 of the said Code, the Judge or Magistrate for some special reason to be recorded by him on the copy, thinks fit to furnish without such payment

(g) copies of all documents furnished under the orders of any court or magistrate to any Government advocate or pleader or other person specially empowered in that behalf for the purpose of conducting any trial or investigation on the part of the Government before any Criminal Court.

(h) copies of all documents which any such advocate, pleader or other person is required to take in connection with any such trial or investigation, for the use of any court or Magistrate, or may consider

necessary for the purpose of advising the Government in connection with any criminal proceedings

(i) copies of judgments or depositions required by officers of the Police Department in the course of their duties

(13) to direct that the fee chargeable on an application to any Collector with respect either to liability to assessment or to the amount or rate of an assessment or for a refund of income-tax under the Indian Income-Tax Act, 1918 (VII of 1918), shall be limited to one anna ,

(14) to remit the fee chargeable on an application presented by any person for the return of a document filed by him in any court or public office ,

(15) to direct that, when a part of an estate paying annual revenue to the Government under a settlement which is not permanent is recorded in the Collector's register as separately assessed with such revenue, the value of the subject matter of a suit for the possession of, or to enforce a right of pre-emption in respect of a fractional share of that part shall, for for the purposes of the comuptation of the amount of the fee chargeable in the suit, be deemed not to be exceed five times such portion of the revenue separately assessed on that part as may be rateably payble in respect of the share

(16) to direct that , if the amount of the fee chargeable in any case involves a fraction of an anna, the fraction shall be remitted except where otherwise expressly provided by this notification ;

(17) to remit the fee chargeable on an application for the grant of a licence for the vend of stamp ;

(18) to direct that no court fee shall be charged on application for the payment of a fine or of any portion of a fine, the refund of which has been ordered by competent authority:

(19) to remit the fees chargeable on applications for copies of documents detailed in clauses 4 and 12 supra

(20) to remit the duty chargeable in respect of Indian Probates letters of administration or succession certificates on the share or other interest of a deceased member of a company formed under the Indian Companies Act, 1913 (VII of 1913), provided that the said share of interest was registered in a branch register in the United Kingdom under the Indian Companies (Branch Registers Act, 1900 IV of 1900), and that such member was at the date of his decease domiciled elsewhere than in India.

(21) to remit the fees chargeable on applications presented

to officers of land revenue for the suspension or remission of revenue on the ground that a crop has not been sown or has failed

(22) to remit the fee chargeable on applications and petitions presented to a Collector, or any Revenue officer having jurisdiction equal or subordinate to that of a Collector, for advice or assistance from the Agricultural department of the province,

(23) (a) to remit all fees payable under schedule II upon applications for the grant or renewal of licences or duplicates under the Indian Arms Rules, 1920, in respect of which a fee is payable under these Rules, and

(b) to reduce to one anna all fees exceeding one anna payable under schedule II upon other applications relating to licences or duplicates granted or renewed under the said rules;

(24) to remit the fees chargeable on applications for the grant of licences of the nature mentioned in items 8 and 9 of schedule II appended to the Indian Explosives Rules, 1924, to possess gunpowder, other explosives or denotators required *bona fide* for blasting purpose.

(25) to remit as follows the leviable on the property of any person subject to military law either under the Army Act (44 and 45, Vict , Chap. 58) or under the Indian Army Act 1911 (VIII of 1911), who is killed or, dies of wounds inflicted, accident occurring or desease contracted within three years before death, while on active service in the late War ;—

(a) where the amount or value of property in respect of which the grant of probate or letters of administration is made or which is specified in the certificate under the Succession Certificate Act, 1889, in the certificate under Bombay Regulation N 8 of 1827, does not exceed Rs. 50,000, to remit the whole of the fees leviable in respect of that property.

(b) where the said amount or value exceeds Rs. 50,000 to remit the whole of the said fees in respect of the first 50,000, ; and

(c) where any property passes more than once in consequence of such deaths to remit in the case of second and subsequent successions, the whole of said fees irrespective of the value or amount of such property ;

(26) to remit the fees chargeable on applications for mutations of names in respect of the property of any person subject to military law either under the Army Act (44 and 45 Vict, C 58) or under the Indian Army Act, 1911 (VIII of 1911), who is killed or dies of wounds inflicted, accident occurring or diseases contracted within twelve months before death while on active service in the late war

(27) to remit the fees chargeable on applications presented to officers of land revenue for suspension or remission of loans under the Land Improvement Loans Act, 1883 (XIX of 1883), or the Agriculturists' Loans Act, 1884 (XII of 1884).

(28) to remit the fees chargeable on applications for the grant of licences issued in accordance with the provisions of any rule made under Section 9 of the Indian Petroleum Act, 1899 (VIII of 1899), for the possession of dangerous petroleum for use on motor vehicles and for its transport thereon for the purpose of use therein ,

(29) to remit the fees chargeable on copies of decrees of Civil Courts situate in the territories of His Highness the Gaekwar of Baroda forwarded to any court in British India for execution in pursuence of the provisions of Section 44 of the Civil Procedure Code, 1908 (V of 1908)

(30) to reduce to eight annas the fee chargeable on a copy of any number of entries in a settlement record relating to any one village in Kumaun or Garhwal ;

(31) to remit the fees chargeable on—

(a) applications presented to the Collector, or any other officer empowered in this behalf, by occupiers of land for licences to cultivate the hemp plant ;

(b) applications presented to the officers aforesaid by owners or occupiers of land on which the hemp plant grows spontaneously, or by persons authorized by them in this behalf, for licences to collect and store such plant as bhang ;

(c) applications presented to the officers aforesaid by farmers and licensed wholesale vendors of intoxicating drugs authorized in this behalf under arrangements made with the owners and occupiers of land on which the hemp plant grows spontaneously for licences to collect the produce as bhang and to remove it for sale ;

(32) (1) to remit fees payable on all documents filed, exhibited or recorded, in, or furnished by, the court of the

special judge under the Bundelkhand Encumbered Estates Act 1903 (U. P. Act I of 1903) ;

(2) to remit the fees payable on all documents connected with the proceedings in the Court of the Commissioner under the Act, except the memoranda of appeal and on applications for revision of any decision or order of the Special Judge under Chapter VI thereof ,

(3) to reduce to eight annas the fee payable on any appeal against a decision of the Special Judge under Chapter VI of the Act ;

(33) to remit the fees chargeable on notices of claims under section 6, sub-section (c) of the Indian Forest Act, 1878 (VII of 1878) presented to Forest Settlement Officers in the district protected forests of the Kumaun division.

(34) to exempt from the payment of a stamp duty of one anna all applications made under sections 19, 26 and 37 of the Indian Income-tax Act, 1918 (VII of 1918), to a Collector, or to any officer or person discharging all or any of the functions of a Collector under that Act.

United Provinces Government, Finance Department notification No. C-3572/X-70, dated the 19th August 1921

PROCESS FEES.

APPENDIX II

Rules under the Court Fees Act relating to fees payable under that Act As framed by the High Court of Judicature at Fort William in Bengal.

A—Process Fees.

1.—The fees in the following tables shall be charged for serving and executing the several processes against which they are respectively ranged.—

C. O No 6 of 30th April 1891.

PART I

Table of Fees in the High Court, Appellate Jurisdiction.

Article 1—In every case in which personal or substituted service of any process on parties to the cause is required—

	Rs.	A.	P.
when not more than four persons are to be served with the same document *one fee*	3	0	0
when such persons are more than four in number, then the fee above mentioned and an additional fee of 8 annas for every such person in excess of four ...	0	8	0

Provided that, in the last-mentioned case, where such [illegible] of fee prescribed, as the High Court may, in the particular case, determine·

Rule No 6 of 9th August 1901.

Provided, also, that, in analogous cases, where the appellant is the same, but the respondents are different, but reside in the same or immediately adjacent villages, the same rule shall apply.

Article 2.—In every case in which personal or substituted service of any process on any persons who are not parties is required—

	Rs.	A.	P.
when the number of such persons is not more than four, one fee	3	0	0
when there are more than four such persons, then the fee above mentioned for the first four, and an additional fee of eight annas for every one in excess of that number	0	8	0
Article 3—For the execution of a warrant for arrest of the person	3	0	0
Article 4.—For service or execution of any process issued by the court, not specified in any preceding article of this part ...	3	0	0

PART II.

Table of Fees in the Courts of Judges and Subordinate Judges, and in the Revenue Courts when the suit in the Revenue Courts by which the process is issued is valued at a sum exceeding Rs. 1,000.

Article 1—In every case in which personal or substituted service of any process on parties to the cause is required—

	Rs.	A.	P.
when not more than four persons are to be served with the same document, *one fee*	2	0	0
when such persons are more than four in number, then the fee above mentioned and an additional fee of 8 annas for every such person in excess of four ...	0	8	0

Article 2.—In every case in which personal or substituted service of any process on any persons who are not parties is *required*—

	Rs.	A.	P.
when the number of such persons is not more than four, *one fee*	2	0	0
when there are more than four such persons, then the fees above mentioned for the first four and an additional fee of 8 annas for every one in excess of that number	0	8	0

Article 3.—Where process of attachment of property by actual seizure is issued—

	Rs.	A.	P.
(*a*) for the seizure under the order of attachment	2	0	0
(*b*) for each man necessary to ensure safe custody of property so attached, when such man is actually in possession, *per diem* .	0	6	0

Note 1.—When process of attachment is issued in a number of cases relating to the same or neighbouring villages, the fee (*a*) must be paid in each case, the daily fee (*b*) only for the men actually employed

Rule No 3 of 1909

Note 2.—The daily fee (*b*) is to be paid at the time of obtaining the process for so many days as the court shall order, not being ordinarily less than fifteen days, and the number of days required for the coming and going of the officer; but when the officer is not to be left in possession then the daily fee is to be paid only the time to be occupied by the officer going, effecting the attachment, and returning When the inventory filed by the judgment-creditor shows the property to be of such small value that the expense of keeping it in custody may probably exceed the value, the court shall fix the daily fee with reference to the provisions of Order XXI, rule 43, of the Code of Civil Procedure

C O No 6 of 30th April 1891.

Provided that, if it appears that for any reason the number of days fixed by the court under this note, and in respect of which fees have been paid, is likely to be exceeded, and the decree-holder desire to maintain the attachment, the decree-holder shall apply to the court to fix such further number of days as may be necessary, and the additional fees in respect thereof shall be paid in the manner provided in rule 3. If such additional fees be not paid within the period originally fixed, and in respect of which fees have been paid, the attachment shall cease on the expiry of that period.

	Rs.	A.	P.
Article 4.—For the proclamation and publication of any order of prohibition under Order XXI, rule 54 of the Code of Civil Procedure, irrespective of the number of such proclamations or publications ...	2	0	0
Article 5.—For the publication by posting up of a copy or copies of the notification of any proceeding or process, not specially mentioned in any article of this part, irrespective of the number of such publications	2	0	0

Amended by rule No 5 of 1902.

		Rs. a. p.
C. O. No. 6 of 30th April 1891.	*Article 6.*—For executing a decree by the arrest of the person	10 0 0

Article 7.—When an order for the sale of property, other than an order for the sale of distrained property under Act VIII o. 1885, is issued—

	Rs. a. p.
(*a*) for proclaiming the order of sale under order XXI, rule 66, of the Code of Civil Procedure, a fee of	2 0 0
(*b*) for selling the property, a percentage or poundage on the gross amount realized by the sale up to Rs 1,000, at the rate of	2 *per cent.*
together with a fee on all excess of gross proceeds beyond Rs. 1,000, at the rate of	1 ,,

Rule No. 6 of 14 December 1900, amended by Rule No 5 of 1913.

Provided that, where a sale of immoveable property is set aside under Order XXI., rule 89, 91, or 92, of the Code of Civil Procedure, or under Section 174 of the Bengal Tenancy Act, VIII of 1885, no fee shall be charged for selling the property.

C. O. No 6 of 30th April 1891.

Note 1.—The fee under clause (*a*) must be paid when the process is obtained.

The percentage or poundage under clause (*b*) must be paid—

(1) in a case where the purchaser is a person other than the decree-holder—at the time of making the application for payment of the proceeds of sale out of court, as provided in Rule 4 ; and,

(2) in a case where the decree-holder has been permitted to purchase—at the time of the presentation of his application for permission to set off the purchase-money against the amount of his decree as provided in Rule 5.

G. L. No 5 of 10th December 1895

Note 2.—The percentage leviable under this article shall be calculated on multiples of Rs. 25, *i.e.*, a poundage fee of As. 8 should be levied for every Rs. 25 or part of Rs. 25 realized by the sale up to Rs. 1,000, and in the case of the proceeds of the sale exceeding Rs. 1,000 an additional fee of As. 4 for every Rs. 25 or part thereof should be levied.

G. L. No. 2 of 5th May 1905

Note 3.—In cases in which several properties are sold in satisfaction of one decree, only one poundage fee, calculated on the gross sale-proceeds, should be levied, 2 *per cent.* being charged on the gross proceeds up to Rs 1,000, and 1 *per cent* on such proceeds exceeding Rs. 1,000.

C. O. No 6 of 30th April 1891.

	Rs. A. P.
Article 8 —For service of any process not specified in any preceding article of this part	2 0 0

PART III.

Table of Fees in the Courts of Munsifs and of Small Causes, and in the Revenue Courts, when Part II, does not apply [except in the Suits specified in Part IV.]

Article 1.—In every case in which personal or substituted service of any process on parties to the cause is required—

	Rs. A. P.
where not more than four persons are to be served with the same document, *one fee*	1 0 0
where such persons are more than four in number, then the fee above mentioned and an additional fee of four annas for every such person in excess of four ...	0 4 0

Article 2. In every case in which personal or substituted service of any process on any persons who are not parties is required—

where the number of such persons is not more than four, *one fee*	1 0 0
where there are more than four such persons, then the fee above mentioned for the first four and an additional fee of four annas for every one in excess of that number	0 4 0

Article 3.—Where process of attachment of property by actual seizure is issued—

(*a*) for the seizure under the order of attachment	1 0 0
(*b*) for each man necessary to ensure the safe custody of property so attached when such man is actually in possession, *per diem*	0 4

Rule No 6 of 1902.

NOTE 1.—When process of attachment is issued in a number of cases relating to the same or neighbouring villages, the fee (*a*) must be paid in each case, the daily fee (*b*) only for the men actually employed.

C. O. No 6 of 30th April 1891.

NOTE 2 —The daily fee (b) is to be paid at the time of obtaining the process for so many days as the court shall order, not being ordinarily less than fifteen days, and the number of days required for the coming and going of the officer; but, where the officer is not to be left in possession, then the daily fee is to be paid only for the time to be occupied by the officer in going, effecting the attachment, and returning. When the inventory filed by the judgment creditor shows the property to be of such small value, that the expense of keeping it in custody may probably exceed the value, the court shall fix the daily fee with reference to the provisions of Order XXI., r 43, of the Code of Civil Procedure:

Provided that, if it appears that, for any reason, the number of days fixed by the Court under this note, and in respect of which fees have been paid, is likely to be exceeded, and the decree-holder desires to maintain attachment, the decree-holder shall apply to the court to fix such further number of days as may be necessary, and the additional fees in respect thereon shall be paid within the period originally fixed, and in respect of which fees have been paid, the attachment shall cease on the expiry of that period.

	Rs.	A.	P
Article 4.—For the proclamation and publication of any order of prohibition under Or. XXI., r 54, of the Code of Civil Procedure, irrespective of the number of such proclamations or publications ...	1	0	0
Amended by Rule No 5 of 1902. *Article 5.*—For the publication by posting-up of a copy or copies of the notification of any proceeding or process, not specially mentioned in any article of this Part, irrespective of the number of such publications	1	0	0
C O. No. 6 of 30th April 1910. *Article 6.*—For executing a decree by the arrest of the person	4	0	0
Article 7 —Where an order for the sale of property other than an order for the sale of distrained property under Act VIII. of 1885 is issued—			
(*a*) for proclaming the order of sale under O. XXI., r. 66 of the Code of Civil Procedure, a fee of	1	0	0

(b) for selling the property, a percentage or poundage on the gross amount realized by the sale up to Rs 1,000 at the rate of 2 *per cent*, together with a further fee on all excess of gross proceeds belonged Rs 1,000 at the rate of 1 *per cent*

Rule No 6 of 14th December 1908 amended by Rule No 5 of 1913

Provided that, when a sale of immoveable property is set aside under O XXI r. 89, 91, or 92, of the Code of Civil Procedure, or under section 174 of the Bengal Tenancy Act (VIII of 1885), any poundage or other fee charged for selling the property shall, on application be refunded.

C O. No 6 of 30th April 1891

NOTE 1 —The fee under clause (a) must be paid when the process is obtained

The percentage or poundage under clause (b) must be paid—

(1) in a case where the purchaser is a person other than the decree-holder—at the time of making the application for payment of the proceeds of sale out of court as provided in Rule 4, and

(2) in case where the decree-holder has been permitted to purchase—at the time of the presentation of his application for permission to set off the purchase-money against the amount of his decree as provided in Rule 5

G L. No. 5 of 10th December 1895.

NOTE 2 —The percentage leviable under this article shall be calculated on multiples of Rs. 25, *i e.*, a poundage fee of As. 8 should be levied for every Rs. 25 or part of Rs 25 realized by the sale up to Rs 1,000, and in the case of the proceeds of the sale exceeding Rs. 1,000, an additional fee of As 4 for every Rs. 25 or part thereof should be levied.

G. L. No 2 of 5th May 1905.

NOTE 3.—In the cases in which several properties are sold in satisfaction of one decree, only one poundage fee calculated on the gross sale-proceeds, should be levied, 2 *per cent*. being charged on the gross sale-proceeds up to Rs. 1,000 and 1 *per cent*. on such proceeds exceeding Rs. 1,000.

Article 8.—For service

		RS. A. P.
C. O. No. 6 of 30th April 1891.	of any process not specified in any preceding article of this Part	1 0 0

PART IV.

Table of Fees in the Courts of Munsifs, in Small Cause Courts, and in the Revenue Courts, where the suit is for Debt or Damage to Personal Property, or for Rent, and where the Claim does not exceed Rs. 50.

	RS. A. P.
Article 1—In every case in which personal or substituted service of any process on parties to the cause is required where not more than four persons are to be served with the same document, *one fee*	0 8 0
where such persons are more than four in number, then the fee above mentioned and an additional fee of As. 4 for every such person in excess of four ...	0 4 0
Article 2—In every case in which personal or substituted service of any process on any person who are not parties is required, for each person to be served ...	0 4 0
Article 3.—Where process of attachment of property by actual seizure is issued—	
(*a*) for the seizure under the order of attachment	0 8 0
(*b*) for each man necessary to ensure the safe custody of properties so attached, when such man is *actually in possession, per diem* ...	0 4 0

NOTE 1—When process of attachment is issued in a number of cases relating to the same or neighbouring villages, the fee (*a*) must be paid in each case, the daily fee (*b*) only for the men actually employed.

Rule No 6 of 1902.

NOTE 2.—The daily fee (*b*) is to be paid at the time of obtaining the process for so many days as the court shall order, *not being* ordinarily less than 15 days, and the number of days required for the coming and going of the

C. O. No 6 of 30th April 1891.

officer; but when the officer is to be left in possession, then the daily fee is to be paid only for the time to be occupied by the officer in going, effecting the attachment, and returning. When the inventory filed by the judgment-creditor shows the property to be of such small value that the expense of keeping it in custody may probably exceed the value, the court shall fix the daily fee with reference to the provisions of O. XXI, r. 43, of the Code of Civil Procedure:

Provided that, if it appears that, for any reason, the number of days fixed by the court under this note, and in respect of which fees have been paid, is likely to be exceeded, and the decree-holder desires to maintain the attachment, the decree-holder shall apply to the court to fix such further number of days as may be necessary, and the additional fees in respect thereof shall be paid in the manner provided in Rule 3. If such additional fees be not paid within the period originally fixed, and in respect of which fees have been paid, the attachment shall cease on the expiry of that period.

	Rs.	A.	P.
Article 4.—For the proclamation and publication of any order of prohibition under O. XXI, r. 54, of the Code of Civil Procedure irrespective of the number of such proclamations or publications ...	1	0	0
Article 5.—For the publication by posting-up of a copy or copies of the notification of any proceeding or process, not specifically mentioned in any article of this part, irrespective of the number of such publications	1	0	0
Article 6.—For executing a decree by arrest of the person	1	0	0
Article 7.—Where an order for the sale of property other than an order for the sale of distrained property under Act VIII. of 1885 is issued—			
(*a*) for proclaiming the order of sale under O. XXI., r. 66, of the Code of Civil Procedure, a fee of ...	1	0	0
(*b*) for selling the property, a percentage or poundage on the gross amount realized by the sale up to Rs 1,000, at the rate of 2 *per cent.* together with a further fee, on all			

excess of gross proceeds beyond Rs. 1,000, at the rate of *1 per cent.* :

Provided that, when a sale of immoveable property is set aside under O. XXI., r. 89, 91, or 92, of the Code of Civil Procedure, or under section 174 of the Bengal Tenancy Act (VIII of 1885), any poundage or other fee charged for selling the property shall, on application, be refunded.

Rule No. 6 of 14th December 1908, ameded by Rule No 5 of 1913

C O No 6 of 30th April 1891

NOTE 1.—The fee under clause (*a*) must be paid when the process is obtained.

The percentage or poundage under clause (*b*) must be paid—

(*1*) in a case where the purchaser is a person other than the decree-holder—at the time of making the application for payment of the proceeds of sale out of court, as provided in rule 4, and,

(*2*) in a case where the decree-holder has been permitted to purchase—at the time of the presentation of his application for permission to set off the purchase-money against the amount of his decree, as provided in Rule 5.

G. L. No. 5 of 10th December 1895.

NOTE 2.—The percentage leviable under this article shall be calculated on multiples of Rs. 25, *i.e.*, a poundage-fee of eight annas should be levied for every Rs 25 or part of Rs 25 realized by the sale up to Rs 1,000, and, in the case of the proceeds of the sale exceeding Rs. 1,000, an additional fee of four annas for every Rs 25 or part thereof should be levied.

G. L. No 2 of 5th May 1905

NOTE 3.—In cases in which several properties are sold in satisfaction of one decree, only one poundage-fee, calculated on the gross sale-proceeds, should be levied, *2 per cent.* being charged on the gross proceeds up to Rs. 1,000, and *1 per cent.* on such proceeds exceeding Rs 1,000.

		Rs. A. P.
C. O. No. 6 of 30th April 1891.	*Article 8* —For service of any process not specified in any preceding article of this part	1 0 0

2 Notwithstanding Rule 1, no fee shall be chargeable for serving and executing any process, such as a notice, rule, summons, or warrant of arrest, which may be issued by any court of its own motion, solely for the purpose of taking cognisance of, and punishing, any act done or words spoken in contempt of its authority

3. The fees hereinbefore provided, except those mentioned in the next rule, shall be payable in advance at the time when the petition for service or execution is presented, and shall be paid by means of stamps affixed to the petition, in addition to the stamps necessary for its own validity

4 The proceeds of a sale effected in execution of any decree will only be paid out of court on any application made for that purpose in writing, and the poundage fee for selling the property provided in clause (*b*) of Article 7 of Parts II, III and IV must be paid by stamps affixed to, or impressed upon, the first of such applications, whether it be or be not made by the person who obtained the order for sale, or whether it does not extend to the whole of the proceeds. No fee will be chargeable upon any such application subsequent to the first.

5. In cases in which the decree-holder applies for leave to purchase under O. XXI, r 72, of the Code of Civil Procedure, no order to set off the purchase-money against the amount of the decree shall be made upon the application for leave to purchase Such order shall be made upon a petition presented after the property has been knocked down to the decree-holder at the auction-sale, and such petition shall be stamped with stamps of the value of the poundage fee due for selling the property under clause (*b*) of Article 7 of Parts II, III and IV.

6. Upon the hearing of such petition, the costs of execution, including the amount of the stamps attached to the petition, shall be ascertained, and shall be added to the decree; and, in cases in which the amount of the purchase-money exceeds the amount of the decree, and of such costs, the decree-holder, who has so purchased the property, shall pay into court the sum of 25 *per cent* upon the balance of the purchase-money after deducting the amount of the decree and of such costs, and shall pay the balance at the expiration of fifteen days in accordance with O. XX, r. 85, of the Code of Civil Procedure.

C O No 5 of 4th September 1891

7 Throughout, or in any part of, the localities mentioned in the Schedule annexed to this rule, and for the periods of the year during which travelling except by boat is, in the opinion of the District Judge, impracticable, the fees chargeable for the service of processes shall be increased by

25 *per cent.* in order to provide for payment of the boat-hire or ferry-toll rendered necessary by the state of the country. The additional fees may, however, be reduced to 12½ *per cent.* over the fees ordinarily leviable at the discretion of the District Judge in any part of the district where, or at any season of the year when, the levy of the larger amount is found to be unnecessary.

Note—The process-server's boat-hire passed under this rule should alone be included under the head of "Process-serving Charges" under "Special Contingencies."—*Vide* Resolution of the Financial Department of the Government of Bengal dated the 4th August, 1890.

Districts.	*Local Areas.*
24-Parganas	The Magrahat, Falta, Kulpi, Kakdip, and Mathurapur Thanas of the Diamond Harbour Munsifi; the Baruipur, Matla, and Joynagar Thanas of the Baruipur Munsifi ; the Bhangar, Sonarpur, Vishnupur, and Budge-Budge Thanas of the Sadar Munsifi ; and the Haroa and Hasanabad Thanas of the Basirhat Munsifi.
Nadia	The whole district.
Murshidabad	Ditto.
Jessore	Ditto.
Khulna	Ditto.
Hooghly	The Arambagh Munsifi.
Rajshahi	The whole district.
Dinajpur	The Raiganj, Kaliganj, and Bunshihari Thanas of the Raiganj Munsifi.
Rangpur	The Kurigram and Gaibanda Munsifi and the Kaliganj Thana of the Sadar Munsifi.
Pabna-Bogra	The whole district.
Dacca	Ditto.
Mymensingh	Ditto.
Faridpur	Ditto.
Backergunge	The whole district.
Tippera	Ditto
Noakhali	Ditto.
Chittagong	The Cox's Bazar, Hathazari, North Raojan Munsifi.

Cachar ..	The whole district.
Sylhet	Ditto
Goalpara	Ditto
Kamrup	Ditto
Darrang	Ditto
Nowgong ..	Ditto
Sibsagar	Ditto
Lakhimpur	Ditto

Rule No. 6 of 30th April 1891.

8 (*a*) In such districts or parts of districts as are not for the time being subject to Rule 7, when, in order to the service of any process, the peon has to cross a ferry, then the amount, if any, legally eligible as toll shall be paid by the court executing such process from its permanent advance

(*b*) The permanent advance mentioned in this Rule is the special permanent advance sanctioned by the Local Government for the purposes of the Rules.

9 In cases in which the process is to be served in the jurisdiction of another court, the proper fee chargeable under Rule 1 read with Rule 7 shall be levied, in the manner above directed, on the application for the transmission of the process to that court, and a note shall be made on the process stating that this has been done A court, which receives from another court, whether in the same Province or not, a process bearing a certificate that the proper fee has been levied, shall cause it to be served without further charge.

NOTE. 1—The fees paid in pursuance of these rules must, in all proceedings, be deemed and treated as part of the necessary and proper cost of the party who pays them.

Rule No 5 dated 28th April 1890.

NOTE 2.—By arrangement between the Government of India, and His Highness the Nizam of Hyderabad, civil processes for service or execution within His Highness's territories will be issued and served in accordance with the above rule.

Modified, 1917.

Processes issued by Civil Courts in His Highness the Nizam's territories, will be served or executed in the province of Bengal Presidency, free of charge.

NOTE. 3.—As regards the service of processes and execution of decrees in the Chittagong Hill Tracts *see* Chapter I., Rules 41 and 87.

NOTE 4.—Processes issued by courts in India for service by Colonial Courts must be accompanied by a remittance sufficient to meet the cost of service.

G L. No 6 of 26th November 1897.

In Mauritius, the cost of service is Rs. 3 per person in town, and to this must be allowed 75 cents per mile travelling allowance for service in the country. For processes not accompanied by an English translation and requiring translation in Mauritius, an additional fee of Rs. 10 should be remitted

II.—*Inspection of Records by Registration officers.*

1. Government having directed the Inspector-General and Inspectors of Registration to examine record-rooms of the various Courts in Mufassil in order to see how far the rules and instructions on the subject of the punching, custody, and sale of stamps are carried out, every assistance should be afforded by Judicial Officers to such officers in the discharge of their duty.

G L. No 16 of 18th September 1879

2. Government having ordered that, on the discovery of any irregularities in respect of punching or otherwise defacing court-fee stamps, the inspecting Registration Officer shall at once bring the matter to the notice of the presiding officer of the court, such latter officer should inquire into the matter at once, with the object of tracing the person who is responsible for the omission pointed out by the inspecting officer.

C. L. No. 5 of 21st April 1880

III.—PROCESS-SERVERS.

Rules framed by the High Court under Clause (iii) of Section 20 of Act VII of 1870.

1. The following monthly salaries shall be allowed to peons employed in the service or execution of processes of the Civil Courts:—

C. O. No 37 of 17th November 1880

		per mensem.
1st.—In the Court of the District Judge and Subordinate Judges (not acting Judge of a Small Cause Court) Peons, 2nd grade	Rs.	13
Do, 1st grade, after three years' approved service	,,	14

2nd—In the Courts of Munsifs—

Peons, 2nd grade	,,	6
Do, 1st grade, after three years' approved service	,,	8

C. O No 9 of 1902

3rd (*a*) Small Cause Court at Sealdah—

Peons, 2nd grade ..	,,	7
Do, 1st grade .	,,	8

Provided that the number of peons of the 1st grade shall not exceed nine

(for amended Notification see Calcutta Gazette, 1921, Part I)

(*b*) Small Cause Courts other than the Small Cause Court at Sealdah—

Peons, 2nd grade	,,	6
Do, 1st grade	,,	7

C. O No 37 of 17th November 1880.

Peons in the Revenue Court of a Collector shall be remunerated as those in the court of the District Judge. Peons in the Revenue Court of a Deputy Collector shall be remunerated as those in the court of a Munsif.

Rule No 4 of 1913.

Process servers in the district of Darjeeling get a hill allowance of Rs 1-8 a month each. In Siliguri, if this allowance is insufficient to make the total of pay and allowance up to Rs. 8, the allowance is increased so as to make up that total. In other stations of Darjeeling districts, if the allowance is insufficient to make the total of pay and allowance up to Rs. 9-8, it is increased so as to make up that total.

NOTE.—Peons become eligible for the first grade only after three years approved service, and the grade should be restricted to a number not exceeding two-fifths of the whole number of peons (C. O. No 9 of 18th May, 1881, Modified 1917).

Rule No 12 of 15th September 1890

2. The following monthly salaries shall be allowed to peons employed in the service for execution of processes of the Ci- Courts in the Assam Valley D-

1st.—In the Courts of Sub-Judges:

	In Goalpara, Kamrup, Darrang, and Nowgong.	Sibsagar and Lakhimpur.
	Rs.	Rs.
Peons, 2nd grade	8	10
Do., 1st grade, after three years' approved service ...	10	12
2nd —In the Court of Munsifs—		
Peons, 2nd grade	6	8
Do , 1st grade, after three years' approved service ...	8	10

Provided that the number of peons in the higher grade shall not exceed one-third of the total number employed in any district.

Rules framed by the High Court under Section 22 of Act VII of 1870.

Rule No 7 of 29th October 1901—modified, 1910

3. The Judge of every district shall ascertain the average number of original processes issued from his own courts and courts subordinate thereto, during the immediately preceding three years

Rule 8 of 1910

For the purpose of this rule all copies of a process (whether it be a summons, warrant, notice or whatever its description) served in one village in one case by a process-server at one and the same visit, shall be reckoned as one original process; while copies served in the same village on separate visits or in different villages, shall be reckoned as so many original processes as the number of different villages or separate visits to the same village. Thus where 5 copies of a process are served on 5 different persons in the same village in one visit by a process-server, this will be reckoned as a service of one original process; while where they are served in the same village on 5 separate visits, or in 5 different villages, this will be reckoned as a service of 5 original processes.

Modified 1910.

4. (*a*) The peons to be employed in each district shall be in number sufficient for the execution of the number of original processes so obtained, each peon, being for this purpose considered capable of executing, during the year, not less than 400 original processes in the case of the Superior Courts, and not less than

500 in the case of the Munsifs Courts throughout the Presidency of Bengal (except in the Darjeeling Districts) and the District of Sylhet in the Province of Assam In the Assam Valley Districts and in Cachar, where Civil, Criminal and Revenue processes are served by each peon during the year shall be not less than 345 in the case of the former and 515 in the case of the latter both in the Superior Courts and in the Munsif's Courts. In the District of Darjeeling, where the same system prevails the number of original processes to be served by each peon during the year shall not be less than 450, both in the Superior Courts and Munsif's Courts

(b) As regards the Courts of Small Causes at Munshiganj, Hooghly, Serampore, and Sealdah, the District Judges of Dacca, Hooghly, and the 24-Parganas, respectively, shall fix the number of original process which each of the process-serving peons employed in these courts shall be considered capable of executing during the year

Modified 1910

5 Where there are, in any district, several courts of one class, the District Judge may authorize the appointment of such aggregate number of peons for all such courts as may suffice for the execution of all the processes issued by such courts, and may from time to time apportion such peons among such courts as may appear necessary.

C O No 37 of 17th November 1880

IV.—*Copies.*

1 In the all Civil Courts, a uniform charge shall be made for the preparation of manuscript copies whether certified or uncertified, at the rate of 3 annas per folio These terms, it is to be carefully explained to all subordinate officers, merely denominate a certain quantity of manuscript: the folio to consist of 150 words English or 300 words Vernacular, four figures counting as one word.

Rule No. 12 of 1892 amended by Rule No 3 of 1905, framed under the Charter Act

2 (a) This charge shall be levied by means of an impressed stamp of 3 annas on each sheet of paper corresponding with the folio to be provided by the applicant for a copy. Each of these sheets shall contain a folio, that is, 150 words English or 300 words Vernacular. As there are 25 lines in each sheet no line shall contain more than 6 words English or 12 words Vernacular.

(b) In the case of type-written copies, certified or certified, the following uniform charges shall be made, *viz.*·

(1) The impressed stamped paper of three annas, referred to in the preceding paragraph, for copies of documents containing 150 type-written words or less.

(2) The same impressed stamped paper of 4 annas, with an adhesive stamp of 4 annas, affixed thereto, for copies of documents containing from 151 to 300 type-written words ; and

(3) The same impressed stamped paper of 3 annas, with an adhesive stamp of 6 annas affixed thereto, for *copies of documents containing from 301 to 450* type-written words These sheets should be used for copies of lengthy documents. For the concluding portion of such documents, the stamped *paper (1), (2), or (3) should be used,* according to the number of words remaining to be typed.

(c) These charges, it will be seen, correspond exactly with the charges for manuscript copies, *viz.*, 3 annas for a folio of 150 English words The sheets will be divided into three equal parts by blue lines, each 'part being intended for 150 *type-written words. In the case of the charges (2) and (3)* above, the adhesive stamp will be affixed across the perforated line on the top of the sheet of the impressed stamped paper.

3. In the case of certified copies, the court-fee chargeable under the Court Fees Act should be levied by affixing the necessary stamps to the first folio of the copy.

Rules Nos 12 and 13 of 1902.

4. Uncertified copies may be converted into certified copies, after comparison with the originals, upon the application of the person to whom they have been granted, and upon his filing with such application the necessary court-fee stamps required by law.

5. When an applicant requires his copies to be furnished on the day of application, an extra fee of one rupee (or, if the copies exceed our folios, of 4 annas for each folio) shall be charged on all copies so furnished, to be levied from him by a court-fee stamp, which should be affixed to the application for the copy, and be entered in the Register of Court-fee Stamps. Care, however is to be taken that other applicants for copies do not materially suffer by the arrangement. If the granting of other copies be much delayed for this rule, an extra hand ought to be told off to furnish their copies.

6. In the case of maps and plans, no general rule can be laid down. In each case, a charge will have to be fixed with reference to the difficulty or intricacy of the work to be done.

Half will be paid to the copyist and half credited to Government on account of examination fees and cost of materials.

Rule No. 2 of 1902 amended by Rule 3 of 1905.

7. All copies, whether certified or uncertified must, before issue, be examined by a salaried officer, the copies themselves will, in all cases, be made by licensed copyists, who will be remunerated at the rate of 2 annas per folio

Note—The duty of examining copies should, and a rule, be entrusted to the Comparing or Examining Clerks, and if there is one in the office, to the Head Clerk, or Serishtadar The copyists and typists must not be allowed to examine for each other.

Rule No 12 of 1909

8 A certified copy must be "certified to be a true copy," must bear the seal of the court, and must be signed in full, if not by the presiding officer, then by officer hereinafter named, *viz.*:—

At the head quarters of a District—

in the case of copies of judicial documents not being wills—by the Serishtadar;

in the case of copies of other documents including copies of wills—by the Head Clerk:

In Courts of Small Causes constituted under Act IX, of 1887—

all certified copies—by the Head Clerk:—

In other Courts at out-station—

all certified copies—by the Serishtadar.

In every case, the certifying officer will append to his signature the words "authorized under section 76, Act I of 1872."

The words "Certified to be a true copy" and "Authorized under section 76, Act I of 1872," may be impressed by means of a stamp.

Note—Uncertified copies should only be marked as "examined," and initialled by the Examiner.

9 One-third of the charge of 3 annas per folio, levied by means of impressed stamp, represents the payment to Government, on account of the salary of Examiners, cost of paper, &c., the remaining two-thirds will represent the earnings of the section-writers, whose account will be made up monthly, and the amount due to each paid out of contingencies. Those payments must be checked at the time with upper part of each stamp, which, when the copy is ready must be torn off from each sheet along the perforated lines and then

endorsed with the copyist's name, and kept till the end of the month. Care must be taken to see that nothing in excess of two-thirds of the amount realized in stamps is paid away.

10. To prevent the risk of stamped slips being used more than once, the officer passing a copyist's account will, after checking it as directed, tear up the slips to pieces, and cause them to be burnt in his presence. A certificate that this has been done must be attached to the contingent bill on which the copyist's fees are drawn.

11. To protect the interests of the Government, care must be taken to see that all copies issued from courts are prepared on the prescribed stamped paper; they must be written on one side of the sheet only, and must not contain more than authorized number of words. On the other hand, care must be taken to see that applicants are not imposed upon by the copyist's spreading their writing over a larger number of sheets than is necessary.

By insisting on the number of lines in each sheet being uniform, control may easily be exercised in this matter, the number of words in a few of the lines of each folio being checked. The business of a copyist is (like most other occupations) one calling for skill, and greatly dependent for its successful practice on experience. Copyists, therefore, must possess or acquire skill in their business, or they ought not to be retained. Copyists who fail to do their work satisfactorily must be removed.

Rule No. 12 of 1902.

12 Under ordinary circumstances, the time for furnishing the copies required shall not be later than 1 P.M. of the fifth open day after the presentation of the application.

C. O. No. 1 of 12th June 1883 Rule No. 6 of 5th December 1893, and the G. L. No. 13 of 22th May, 1902: modified 1910.

13. When a copy of a decree, judgment or order is granted, the following particulars must invariably be recorded on the back of the copy itself, and in the form given below, for the information of the Appellate Court (section 12, Act IX of 1908, the Indian Limitation Act):—

Date of application for the copy.

Date of notifying the requisite number of folios and stamps.

Date of delivery of the requisite folios and stamps.

Date on which the copy was ready for delivery.

Date of making over the copy to applicant.

Note.—Compare I. L. R., 9 Cal. L. R. 293, which is to be strictly followed.—*H. C. 1757, 1883.*

CRIMINAL.

Rules framed by the Calcutta High Court.

1 *Charge for Copies.*—(*a*) In all Criminal Courts, a uniform charge shall be made for the preparation of copies, whether certified or uncertified, at the rate of 4 annas per folio This term, it is to be carefully explained to all subordinate officers, merely denominates a certain quantity of manuscript the folio to consist of 150 words English, or of 300 words Vernacular, 4 figures counting as one word.

C. O. No 1 of 24th January 1890.

(*b*) This charge shall be levied by means of an impressed stamp of 4 annas on each of paper corresponding with the folio to be provided by the applicant for a copy. Each of these sheets shall contain a folio, that is, 150 words English or 300 words Vernacular As there are 25 lines in each sheet, no line shall contain more than 6 words English or 12 words Vernacular

(*c*) All copies, whether certified or uncertified, must, before issue, be examined by a salaried officer. The copies themselves will in all cases, be made by section writers, who will be remunerated at the rate of 2 annas per folio.

(*d*) Uncertified copies may be converted into certified copies upon the application of the person to whom they have been granted, and upon his filing with such application the necessary 8-anna court-fee stamps required by law.

(*e*) Certified copy must be "certified to be a true copy," must bear the seal of the court, and must be signed in full, if not by the Presiding Officer, then by the officer hereinafter named, *viz* :—

At the head-quarters of a District—

all certified copies—by the Head Clerk of the Court of the District Magistrate:

In Courts at Sub-divisions—

all certified copies—by the Head Clerk of the Court of the sub-divisional Magistrate.

In every case the certifying officer will append to his signature the words "Authorized under section 76, Act, I of 1872."

The words "Certified to be a true copy" and "Authorized under section 76, Act I of 1872," may be impressed by means of a stamp.

(*f*) One- third of the charge of 4 annas per f "

by means of impressed stamp, represents the payment to Government on account of the salary of Examiners, cost of paper, &c., the remaining two-thirds will represent the earnings of the section—writers, whose accounts will be made up monthly, and the amount due to each paid out of contingencies. These payments must be checked at the time with the upper part of each sheet, which, when the copy is ready, must be torn off from each sheet along the perforated lines, and then endorsed with the copyist's name, and kept till the end of the month Care must be taken to see that nothing in excess of *two-thirds of the amount realized in stamps is paid away.*

(*g*) To prevent the risk of stamped slips being used more than once, the officer passing the copyist's account will, after checking it as directed, tear up the slips to pieces, and cause them to be burnt in his presence. A certificate that this has been done must be attached to the contingent bill on which the copyists' fees are drawn.

(*h*) To protect the interests of the Government, care must be taken to see that copies issued from the courts are prepared in the prescribed stamp paper: they must be written on one side of the sheet only, and must not contain more than the authorized number of words. On the other hand, care must be taken to see that applicants are not imposed upon by the copyists spreading the writing over a larger number of sheets than is necessary By insisting on the number of lines in each sheet being uniform, control may easily be exercised in this matter, the number of words in a few of the lines in each folio being checked The business of a copyist is (like most other occupations) one calling for skill, and greatly dependent for its successful practice on experience. Copyists, therefore, must possess or acquire skill in their business, or they ought not to be retained Copyists who fail to do their work satisfactorily must be removed.

(*i*) When an applicant requires his copies to be furnished on the day of application, an extra fee of one rupee (or, if the copies exceed four folios, of 4 annas per each folio) shall be charged on all copies so furnished, to be had from him by a court-fee stamp, which should be affixed to the application for the copy, and be entered in the Register for Court-fee Stamps Care, however, is to be taken that other applicants for copies do not materially suffer by the arrangement If the granting of other copies be much delayed by this rule, an extra hand ought to be told off to furnish their copies.

(*j*) Under ordinary circumstances, the time for furnishing the copies required shall not be later than 1 P.M. of the fifth open day after the presentation of the application.

(k) When a copy of a judgment, sentence, or order is granted, the following particulars must invariably be recorded in the back of the copy itself, and in the form † given below for the information of the Appellate Court (section 12, Act IX of 1908) —

Date of application for the copy

Date of delivery of requisite stamped sheets

Date on which the copy was ready for delivery ‡

Date of making over the copy to the applicant

(l) In the case of certified copies, the court fee chargeable under the Court Fees Act should be levied by affixing the necessary stamp to the first folio of the copy

(m) In the case of maps and plans, no general rule can be laid down In each case a charge will have to be fixed with reference to the difficulty or intricacy of the work to be done Half will be paid to the copyist and half credited to Government on account of examination fees and cost of materials

§ In criminal cases, parties are entitled to obtain copies, certified or uncertified, or any portion of the record of trial. This ruling covers such Police-papers as may be made use of as evidence at the trial As regards other Police-papers, the High Court can pass no order —*H. C 1972 (1880)*

Complainants must pay copying fees whenever they want copies But an accused is, under section 371 of Act V of 1898, entitled, in cases other than summons-cases, to a copy of the judgment absolutely free of charge, and in plain paper.—*H. C Proceedings, May, 1881.*

As a general rule, copies of exhibits in a criminal case should certainly not be granted to persons who are strangers to the case A Magistrate should use his discretion in each case, acting on the general principle that no copies should be given to a stranger without a good cause being shown.—*H. C. Proceeding 1882.*

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† This form is printed in the reverse of the stamped sheets and in use for copies.

‡ Compare 9 C L. R. 291, which is to be strictly follow *H C 1757, 1883.*

Process Fees in Bihar and Orissa.

The 10th December, 1920.

(CIVIL.)

Rule No. 2 1920.

I

No —55.—*Substitute* the following rule which will come into operation on the 1st January, 1921, in place of Rule I at pages 120-130 of the General Rules and Circular Orders, Volume, I, Civil :—

Rules framed by the High Court under clause (1) of section 20 of the Court-fees Act, 1870, declaring the fees chargeable for the service and execution of process issued by the Civil and Revenue Courts.

1 The fees in the following tables shall be charged for serving and executing the several processes against which they are respectively ranged :—

Nature of process	Table of fees.		
	1. In Courts of District Judges 2. In Courts of Subordinate Judges. 3. In Courts of Munsifs and Revenue Courts where the suit in which process is issued is valued at over Rs. 1,000.	In Courts of Munsifs and Small Causes and in Revenue Courts where the suit in which process is issued does not exceed Rs. 1,000 and exceeds Rs. 50 in value.	In Courts of Munsifs and of Small Causes and in Revenue Courts where the suit does not exceed Rs. 50 in value.
1	2	3	4
Article 1.—In every case in which personal or substituted service of any process on parties to the cause is required, where not more than four persons are to be served with the same document—one fee	3 0 0	1 8 0	0 12 0

Nature of process	Table of fees.		
	1 In Courts of District Judges 2 In Courts of Subordinate Judges 3 In Courts of Munsifs and Revenue Courts, where the suit in which process is issued is valued at over Rs 1,000	In Courts of Munsifs and of Small Causes and in Revenue Courts where the suit in which process is issued does not exceed Rs 1,000 and exceeds Rs 50 in value	In Courts of Munsifs and of Small Causes and in Revenue Courts where the suit does not exceed Rs. 50 in value.
1	2	3	4
When such persons are more than four in number, then the fee abovementioned and an additional fee as mentioned in the table for every such person in excess of four.	0 12 0	0 6 0	0 6 0
Article 2.—In every case falling within columns 2 and 3 in which personal or substituted service of any process on any persons who are not parties is required, when the number of such persons is not more than four—one fee	3 0 0	1 8 0	..
When there are more than four such persons, then the fees abovementioned for the first four and an additional fee as mentioned in the table for every one in excess of that number.	0 12 0	0 6 0	...
In every case falling within column 4 in respect of a similar process for each person	...	...	0 6 0
Article 3.—Where process of attachment of property by actual seizure is issued—			
(a) for the seizure under the order of attachment;	3 0 0	1 8 0	0 12 0
(b) for each man necessary to ensure safe custody of property so attached when such man is actually in possession, per diem.	0 9 0	0 6 0	0 6 0

Nature of process	Table of fees.		
	1. In Courts of District Judges. 2. In Courts of Subordinate Judges. 3. In Courts of Munsifs and Revenue Courts where the suit in which process is issued is valued at over Rs 1,000	In Courts of Munsifs and of Small Causes and in Revenue Courts where the suit in which process is issued does not exceed Rs 1,000 and exceeds Rs. 50 in value.	In Courts of Munsifs and of Small Causes and in Revenue Courts where the suit does not exceed Rs 50 in value.
1	2	3	4
Article 4.—For the proclamation and publication of any order of prohibition under Order XXI., Rule 54 of the Code of Civil Procedure, irrespective of the number of such proclamations or publications	3 0 0	1 8 0	1 8 0
Article 5.—For the publication by posting of a copy or copies of the notification of any proceeding or process not specially mentioned in any article, irrespective of the number of such publications.	3 0 0	1 8 0	1 8 0
Article 6.—For executing a decree by the arrest of the person.	15 0 0	6 0 0	1 8 0
Article 7.—Where an order for the sale of property other than an order for the sale of distrained property under Act VIII of 1885 is issued—			
(*a*) for proclaiming the order of sale under Order XXI, rule 66 of the Code of Civil Procedure, a fee of	3 0 0	1 8 0	1 8 0
(*b*) for selling the property, a percentage or poundage on the gross amount realized by the sale up to Rs. 1,000 at the rate of	2 0 0 per cent.	2 0 0 per cent	2 0 0 per cent.
together with a further fee on all excess of gross proceeds beyond Rs. 1,000, at the rate of	1 0 0 per cent.	1 0 0 per cent	1 0 0 per cent
Article 8.—For service of any process not specified in any preceding article.	3 0 0	1 8 0	1 8 0

NOTE.—(1) When process of attachment mentioned in Article 3 is issued in a number of cases relating to the same or neighbouring villages, the fee (a) must be paid in each case, the daily fee (b) only for the men actually employed

(2) The daily fee (b) is to be deposited with the Cashier as peremptory receipt at the time of obtaining the process for so many days as the court shall order, not being ordinarily less than fifteen days, and the number of days required for the coming and going of the officer, but where the officer is not to be left in possession, the daily fee is to be deposited only for the time to be occupied by the officer going, effecting the attachment and returning When the inventory filed by the judgment-creditor shows the property to be of such small value that the expense of keeping it in custody may probably exceed the value, the court shall fix the daily fee with reference to the provisions of Order XXI, rule 43 of the Code of Civil Procedure

Provided that, if it appears that for any reason the number of days fixed by the court under this note, and in respect of which fees have been paid, is likely to be exceeded and the decree-holder desires to maintain the attachment, the decree-holder shall apply to the court to fix such further number of days as may be necessary and the additional fees in respect thereof shall be deposited in advance. If such additional fees be not paid within the period originally fixed and in respect of which fees have been paid, the attachment shall cease on the expiry of the period

The Nazir will purchase a Court-fee stamp of the amount actually incurred in deputing a peon and affix it on the process under the signature of the Presiding Officer in payment of the fees The balance of the deposit, if any, will be available for refund to the party.

NOTE 2.—(1) When a sale of immovable property mentioned in Article 7 is set aside under section 47 or under Order XXI, rule 92 of the Code of Civil Procedure or under section 174 of the Bengal Tenancy Act (VIII of 1885) any poundage or other fee charged for selling the property shall, on application, be refunded.

(2) The fee under (a) must be paid when the process is obtained.

The percentage or poundage under clause (b) must be paid (1) in a case where the purchaser is a person other than the decree-holder, at the time of making the application for payment of the proceeds of sale out of court, as provided i Rule 4 and (2) in a case where the decree-holder has be

permitted to purchase, at the time of the presentation of his application for permission to set off the purchase-money against the amount of his decree as provided in Rule 5.

(3) The percentage leviable under this article shall be calculated on multiples of Rs. 25 (*i.e.*, a poundage fee of 8 annas should be levied for every Rs. 25 or part of Rs. 25 realised by the sale up to Rs. 1,000 and in the case of the proceeds of the sale exceeding Rs. 1,000 an additional fee of 4 annas for every Rs. 25 or part thereof should be levied).

(4) In cases in which several properties are sold in satisfaction of one decree, only one poundage fee, calculated on the gross sale proceeds should be levied, 2 per cent. being charged on the gross sale proceeds up to Rs. 1,000 and one per cent. on such proceeds exceeding Rs. 1,000.

II.

Insert the following note below Rule 7, at page 132 of the General Rules and Circular Orders, Volume I, Civil and number the existing note as "Note 2." :—

NOTE 1.—Fractions of an anna will not be levied, less than six pies being ignored and six pies and over treated as one anna.

The 10th December 1902.

(CRIMINAL).

RULE 1 OF 1920.

I.

No. 56.—*Substitute* the following rule which will come into operation on the 1st January 1921, in place of Rule I, at pages 110-111 of the General Rules and Circular Orders, Volume I, Criminal :—

1. The fees hereinafter mentioned shall be chargeable for serving and executing processes to which the fees are respectively attached, *viz.* :—

	Rs.	A.	P.
(1) Warrant of arrest—			
For the warrant in respect of each person named therein	1	8	0
(2) Summons—			
For the summons in respect of one person, or of the first two persons residing in the same place	[illegible]	[illegible]	0

	Rs.	A	P.
In respect of every additional person named therein	0	6	0
(3) Proclamation of absconding party under section 87 of the Criminal Procedure Code—			
For the proclamation	3	0	0
(4) Proclamation for witness not attending (section 87)—			
For the proclamation	0	12	0
(5) Warrant of attachment—			
For the warrant	1	8	0
Where it is necessary to place officers in charge of property attached, for each officer so employed per diem .	0	6	0
(6) Written order—			
For the order . ..	1	8	0
(7) Injunction—			
For the injunction .. .	1	8	0

NOTE.—The provisions of the Clauses III and IV of section 31, Act VII of 1870, and of Rules 3 and 4 below, apply also to injunctions Criminal officers are, however, reminded that injunctions in proceedings not connected with offences are not chargeable with any fee An injunction under section 143, Criminal Procedure Code, would not carry any fee (Rule No 10 of 26th September 1882)

	Rs.	A.	P.
(8) Notice—			
For the notice .. .	1	8	0

II

Insert the following note below Rule 7 at page 114 of the General Rules and Circular Orders, Volume I, Criminal, and number the existing note as "Note 2" —

NOTE 1 —Fractions of an anna will not be levied less than six pies being ignored and six pies and over being treated as one anna.

Rules under S. 20 (ii). (Bombay).

Fees chargeable for serving processes in case of certain offences.

The fees chargeable for serving and executing processes issued by the Court of any Magistrate in the case of offences, other than offences for which Police Officers may arrest without a warrant, shall be those shown in the Appended Table below

1 In cases falling within chapters 19, 20 and 21 of the Indian Penal Code ,—

i	For every summons or notice	4 annas.
ii	For every warrant of arrest	1 rupee.
iii.	For every proclamation for absconding party or witness (Criminal Procedure Code, Sections, 87 and 88) ..	1 rupee.
iv	For every warrant of attachment ...	1 rupee.

2 In all other cases the fee chargeable for every process shall be one-fourth of the fee shown in the above table.

Proviso.—No fee shall be levied on any process issued upon the complaint of any Public Officer asking as such Public Officer.

The court may remit the process-fees, in whole or in parts, in cases other than those falling under Chapters 19, 20 and 21 of the Indian Penal Code, whenever the court is satisfied that the complainant or the accused has not the means of paying them.

The following rules framed by the Honourable the Chief Justice and Judges of the High Court under Sections 20 and 22 of the Court-fees Act, VII of 1870, confirmed by the Government of Bombay and sanctioned by the Governor-General of India in Council are published for general information :—

Rules Under Sections 20 and 22 of the Court-fees Act.

High Court fees

I —The fees at present levied for serving and executing processes issued by the High Court in its Appellate Jurisdiction shall continue to be levied.

II —The fees chargeable by all other Civil Courts shall be those Civil Court's fees shown in the appended table.

Scale of remuneration to bailiffs, peons, etc.

III —The remuneration of bailiffs, peons and other persons employed by any Civil Courts, other than the High Court, in the service and execution of processes shall be as follows :—

1st Class	..	Rs 25	Per mensem
2nd ,,	...	,, 20	
3rd ,,	..	,, 15	
4th ,,	.	,, 12	
5th ,,	.	,, 9	

Remuneration to European bailiffs

When it is necessary to entertain a European bailiff the pay of such bailiff shall be Rs 50.

Process serving establishment to be classed

IV.—The whole number of the process-serving establishment employed by the Civil Courts in each district shall be divided into five classes receiving the respective remuneration shown in the last

Qualification for several classes.

V.—Provided that no bailiff or peon shall be placed in the third class unless he is able to read and write well, nor in the fourth class unless he is able to read and write fairly.

Number of bailiffs to be employed in several districts

VI.—In fixing the number of bailiffs and peons required to serve processes, District Judges shall consider that the average number of processes, which can be served during the year by each bailiff or peon, is as follows:—

Surat	1,000
Ahmednagar	
Satara	
Thana	
Nasik	
Khandesh	
Poona	
Sholapoor	
Ahmedabad	700
Ratnagiri	600
Bijapur	500
Dharwar	
Belgaum	
Kanara	400

Number of Subordinates to be employed by Courts of Small Causes

VII.—In fixing the number of subordinates required to serve processes in any Court of Small Causes, District Judges shall consider that the average number of processes, which can be served by each bailiff or peon, is as follows:—

In the Small Cause Court

Surat ...	...	...	...	2,000
Broach ..	...	...	...	
Poona .	...	...	...	1,500
Ahmedabad	.	...	..	1,200
Nadiad ..	...	...	..	

Employment of additional temporary bailiffs or peons.

VIII When the salary of any bailiff or peon is paid by the party requiring their services (see note XII* below) additional temporary bailiffs or peons may be employed to a number not exceeding that of the men whose salary is thus paid. If no additional men are employed, the amount should be credited to Government.

As for processes and proclamations.

IX. The following table contains the prescribed fees chargeable in Civil Courts in respect of processes and proclamations:—

TABLE.

Fees chargeable in Civil Courts in respect of processes and proclamations.

Name of process	Amount leviable in.		
	Any Court of Small Causes and any Subordinate Judge's Court in a suit in which no second appeal lies as provided in Section 586 of the Code of Civil Procedure.	District Court and Subordinate Judge's Court in Cases not provided in the preceding Column.	Mamlatdar's Courts.
1. For each Summons (a) to a single defendant, respondent or witness.	0 4 0	1 0 0	1 0 0

Rules I to VIII published in the Government Gazette, dated 10th July, 1888, page 507 being rules I to VIII inclusive under High Courts Circular No 107 at pp. 70 and 71 of the Book of High Court circular orders declared to stand as at present, except that Rule VIII was correct by substituting for the words "fifth exceptions" the words "note XII"—Notification No 8622, dated 11th December 1895. Bombay Government Gazette 1895 Part I page 254.

	Rs a p	Rs a p	Rs a p
(b) to every additional defendant, respondent or witness, residing in the same village, if the process be applied for at the same time	0 2 0	0 8 0	2 0 0
II. For every warrant—			
(a) of arrest in respect of every person to be arrested			
(b) of attachment in respect of such warrant	0 8 0	2 0 0	
(c) of sale in respect of every such warrant			
III For proclamation, injunction or order and every process not otherwise provided for	0 8 0	2 0 0	

Note I—With the sanction of the court any party may pay the cost of proceeding by railway or any public conveyance where such is available, and in such case the process-server shall be bound to proceed by such railway or public conveyance.

Note II.—For process applied for and order to be executed as emergent the fee will be the ordinary and half as much again

Note III—*Fees how to be charged*—Where one individual is to be served in more than one capacity, *e g.*, personally and also as guardian of a minor or minors, only one fee is to be levied

Note IV—*Re-issue of processes unserved*—When a process issued by a Civil Court other than a Mamlatdar's Court is returned unserved for service, a half fee only shall be charged on the occasion of each re-issue.

This rule applies whatever may be the reason which prevented service (*e g*, whether the failure to serve was due to the fault of the party on whose behalf it was issued or not), and whether the identical paper is re-issued or fresh paper.

Note V—*Issue of second process on service being set aside, &c*—When the service is set aside in an inquiry under Section 82, Civil Procedure Code,* or when witnesses, &c, have to be summoned a second time in consequence of the court not sitting or not taking up, or not completing the hearing of the case on the day on which they were first summoned, no further fee is to be levied upon re-issue.

* See now Act V of 1908, First Schedule O V. R. 19

Note VI.—If a warrant has already been issued to arrest a judgment-debtor who has failed to pay the decretal amount and who has been ordered to be imprisoned in a civil jail, and such warrant of arrest is in force, no further fee is leviable on the order of committal to jail.

Note VII —Process issued by court without fee.—No fee is to be charged for any process issued by a court of its own motion.

Note VIII—Exemption of proclamations.—No process-fee shall be charged on proclamations under Section 10 of Regulation VIII of 1872.

Note IX.—Fees for processes &c., in suits under Act XVII of 1879.—The fees levied for all processes in suits to which Chapter II of the Dekkhan Agriculturist's Relief Act (XVII of 1879) applies, except suits of description mentioned in Section 3, Clauses (*w*) and (*x*) to which an agriculturist is not a party, shall be one-half the fees which would be leviable in similar suits, to which the said Act does not apply.

Note X—No fees shall be levied for the service of any notice or other process issued in proceedings taken under Chapter IV of the Dekkhan Agriculturist's Relief Act, XVII of 1879.

Note XI—Nothing contained in these rules (or in any rules heretofore made by the High Court under Section 20 of the Court Fees Act VII of 1870) shall apply to process issued by a Village Munsif under Chapter V of the said Act (XVII of 1879)

Note XII —Salary of bailiffs, &c., required from party.—(*a*) When the services of one or more bailiffs or peons are required for a longer period than three days, the party on whose application the process was issued shall, in addition to the fee leviable under the above rules, be required to pay the whole salary of such bailiffs or peons for the whole period in excess of three days.

(*b*) The time occupied in going to and returning from the place at which service of process is to be made shall not be reckoned as a portion of the above period.

(*c*) If the amount payable on account of salary under the above rule shall involve a fractional part of an anna, such part shall be remitted

Note XIII.—For the purposes of these rules the court of the Agents or Sardars shall be treated as District Courts and all other Civil Courts not specially mentioned, as Subordinate Judge's Courts

118 —*No court fee leviable on certificates of decree holders under Section 258, C. P. Code.*—No court-fee is leviable upon

a certificate of a decree-holder under Section 258 of the Civil Procedure Code, although such certificate declares that the judgment creditor has received a smaller sum or a thing of less value in discharge of a larger sum due under the decree, or in complete discharge of the decree.

119.—Any copy which on its first presentation has been duly stamped, and of which the stamp has been cancelled, may, if otherwise admissible, be used in the same or any other proceeding without a fresh stamp.

120.—*Court fees when to be paid and how.*—Before any process is issued in any court, the proper officer of the court should calculate the amount to be paid as court fees, and should give information of such amount to the person by whom the fees are payable. Such fees should be paid before the end of the fourth day after the day on which such information is given. The court may, for sufficient reason, extend the time for payment.

The stamps received for court fees should be affixed to the application upon which the process is to be issued

Process to be prepared after receipt of the fees.—After the fees have been received but not before, the necessary summons, notice, warrant or other process should be prepared.

Levy of fees to be endorsed on process issued beyond jurisdiction—When the process is to be issued beyond the jurisdiction of the court, a note should be made on the process to the effect that the proper fee has been levied

121.—*Process issued by courts in British territory to be served free of charge in Bombay Presidency*—A process issued by any court in British territory should be served free of charge by any court (including the Court of Small Cause at Bombay) in the Bombay Presidency, if it be certified in the process that the proper fee has been levied under the rules in force in the territory in which the court issuing the process is situated—B G G., 1898, Pt 1, p 354

122.—*Processes to Straits Settlements how to be addressed. Fee and postage to be remitted*—Processes for service in the Straits Settlements should be forwarded to the Registrar of the Supreme Court at Singapore, Penang or Malacca, as the case may be, and should be accompanied by a sum sufficient to cover the fees for service and postage, the remittance being by a Post Officer Money Order.

Sufficient time, not less than three months from the date of posting, should be allowed by courts for the service of summons and other documents on persons resident in the Straits Settle-

ments and for the attendance of such persons before them.—B G. G., 1900, Pt. I, p. 2365.

123.—*Particulars to be given in summonses to His Highness the Nizam's territories.*—In summonses sent to the Resident at Hyderabad for service on persons residing in the territories of His Highness the Nizam the name of each person's place of residence, that is, the district, village and moholla (locality), should be *given in full in the summons.—B. G. G., 189, Pt. 1,* p. 1161.

In the case of summonses to be served in the City of Hyderabad a period of five weeks should be fixed for return, and in the case of summonses to be served in the districts, a period of two months—B. G. G., 1890, Pt. 1, p. 125.

124.—*Processes to Burma.*—Processes sent for service at any place where the language is different from that of the court issuing them, should be accompanied by translations in the language of such place or English. The language of the Presidency Small Cause Court, Bombay, is English.—B. G. Notn., No. 5149 of 1888 (B. G. G., 1888, Pt. 1, p 763).

125.—Foreign processes issued by British Courts under the provisions of Government of India Notification No. 1890—1, dated the 20th June, 1689, are not compulsory in British India. —*B G G., 1901, Pt. I, p. 186.*

126. Processes issued by the District Civil Courts in His Highness the Nizam's Dominions direct to Civil Courts in British India for service in the Districts within the Presidency Proper, or to the Court of Small Causes at Bombay, for service within the limits of the town of Bombay, shall be duly served by the Civil Courts concerned or the Court of Small Causes at Bombay, as the case may be, as if such processes had been originally issued by those courts and returned direct to the courts issuing them.

127. Processes issued by any Civil Courts in British territory for service on persons residing in His Highness the Nizam's dominions shall be sent direct to the Districts Civil Courts* in those dominions having jurisdiction at the places where such persons reside, provided that processes for service in the City of Hyderabad and the suburbs shall be sent to the City Civil Court there.

Processes for service on persons residing in Paigah and Jagir ilakas should be forwarded to District Courts of His *Highness' Government in the jurisdiction of* which the Paigah

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* For the designation of District Courts and the names of the Districts in his Highness' dominions *see* B G G., 1889, Pt. I, p 1161.

and Jagir is situated and not direct to the Paigah or Jagir authorities. In such cases it should be ascertained from the parties concerned whether the person to be summoned resides in a Jagir or Paigah village, and, if so, the name of the District Court within the jurisdiction of which that village is situated.—H. C., Sup. Civ. Cir., No 15; B G G., 1904, Pt. I, p. 1742.

128. Where the processes for service in His Highness' dominions are issued for the appearance as a witness of any person residing there, the amount of batta and travelling allowances to which the witness is entitled shall be remitted, with the process, by Money Order—B. G G, 1899, Pt. I, p. 1161.

129. Processes sent by courts for service from British India *to His Highness the Nizam's dominions and vice versa* will, after service, be conveyed back to the courts of issue, whether British or Hyderabad, at single rates of postages.—B. G. G, 1901, Pt., I p. 1432.

It is notified that general orders have been circulated by the Director-General of the Post Office of India that duty franked official correspondence on the service of His Highness the Nizam will be delivered free—B G G, 1901, Pt I, p 1141.

130 Courts in British territory should send direct to the Courts of Districts concerned all summonses or commissions intended for service or execution within the limits of the territories of Mysore, and should fix such dates for their *return, as will admit of their service or execution within the* appointed time—B G G, 1900, Pt I, p. 2488

Judicial notices, summonses and like judicial papers and notices in Revenue Appeals before the Mysore Darbar will be transmitted to the British authorities in India direct and not through the Resident—H C Sup Civ Cir, No 33; B G G, 1906, Pt I, p 403.

131 † *Processes of certain Courts in Native States to be served free of charge by Courts in Bombay Presidency.*—Processes issued by the Courts in Berar, Mysore, or in the territories of His Highness the Nizam, or in Gwalior, Dewas State (Senior Branch), Dewas State (Junior Branch) Rewa, Jaora, Rutlam, Dhar, Jhabua, Brawani, Ali Rajpur, Bhopal, Orchha, Datia, Panna, Ajaigarh, Charkhari, Bijawar Baoni Chhatarpur, Gharauli, "Kurwai and Narisingarh" ‡ or by any of the courts mentioned in the Government of India's Notifica-

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* Printed as amended—B G G, 1889, Pt I, p 1077, and B. G G, 1897, Pt I, p 466

† The words quoted have been inserted by B G R (P. D), No 1016, 9th Feb 1904, H C Sup Civ Cir, No 6

tion No. 4053-1-A, dated the 11th September ,1902, republished at pages 1639 to 1642 of the *Bombay Government Gazette* for 1902, Part 1, or in subsequent notifications to which the provisions of section 650A of the Code of Civil Procedure § have been applied, shall be served free of charge by the courts in the Bombay Presidency.

Note —For the Table of the courts to which the Governor-General in Council has declared the provisions of section 650A § to apply see Appendix.

*132 * Processes of certain Courts in Native States to be served free.*

When the name of the district where the summonsee resides is not known to the court of issue, the summons may be forwarded to the "Indore Residency Vakil, Indore," for transmission to its destination. Criminal summonses and miscellaneous processes for the recovery of money should be forwarded as heretofore to the Resident. Processes issued by the courts in Indore will be sent by the courts direct and not through the Resident The execution of a decree of Civil Court in British India can only be obtained in the Indore Territory by the decree-holder suing upon it in the Indore Courts.—B. G. Letter (J. D), No. 32.

Processes intended for the subjects of the following States and Thakurates should be forwarded to the address of the Political Officers in whose respective charges they are shown below :—

	States and Thakurates.	Political charge
	passage	The Resident at Gwalior Post
1	Karandia, Arina and Kheri	Office, Gwalior Residency.
	Rajpur	Address of the Officer holding the
2	Kaitha.	The Resident at Indore, Indore
3	Dewas (Senior and Junior).	The Political Agent in Malwa
	Bagli Pathihari and uni.	Nimuch

G. R (J. D.), No 427, 21st Jan. 1909 ; B. G. G., Pt. 1, p 225 ; H C. Sup. Civ. Cir., No 75 , cancelling G. R. (J. D.), No 8011, 18th Dec. 1902 ; B. G. B , 1906, Pt. I, p. 403 ; H C. Sup Civ. Cir., No. 32, last para.

133 The Baroda Courts will serve all summonses issued by Civil Courts in British territory on the understanding that the Darbar will not be asked to enforce attendance. British Courts should serve civil summonses issued by Baroda Courts, on similar terms.—B. G. G., 1901, Pt. I, p. 186.

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§ *See* now s 29 of Act V of 1908.

* The names of Districts and Head Quarters have been substituted by H. C. Sup Civ. Cir. No. 66 (B G G , 1908, Pt. I, p 1603) for those originally mentioned in Cir. No 32.

133A. Summonses issued by all British Indian Courts and all Courts established or continued by the authority of the Governor General in Council in the territories of any Foreign Prince or State, if sent to the Court of the Administrator, Sachin State, or that of the Diwan while the State is under British Administration, will be served by that court as if the summons had been issued by itself, and after being so served will be returned with an endorsement of such service under the hand of the Judge of the Court. Bom. G R (P. D) No. 6334, 22nd September 1903 ; H C. Sup. Civil Circular No. 1.

134. The provisions of section 91 of the Civil Procedure Code (now Sch. 1, O. V r. 30) allowing the substitution of a letter for a summons are to be applied in the case of all Covenanted and Commissioned Officers, Justices of Peace, First Class Subordinate Judges, First Class Magistrates of rank not below that of Deputy Collector, and First Class Sardars and other gentlemen of equal or superior rank.

135 Care should be taken to address Ruling Chiefs and gentlemen of rank in the appropriate style, which in any particular case, when necessity arises, may be ascertained from the Political Agent or the Political Department of the Secretariat On proper occasions titles may be used

136 When a village officer is summoned to give evidence, the summons should be served direct on such officer and a duplicate of it sent to the Mamlatdar, under whom he may be serving, for information , time being allowed, if possible, for making official arrangement for performing the duties at the village of the officer summoned.

137 A Civil Court to which summons for other process has been sent for service should make a return within the time fixed for the hearing of the cause, stating whether service has been effected or not, and if not, the reason for the non-service.

138 If a Court to which a summons has been sent for service be satisfied that the defendant is intentionally avoiding service, such court shall itself direct substituted service to be effected in such manner as it thinks fit under the provisions of the Code of Civil Procedure without further reference to the court issuing the summons

139 In cases under first schedule I O. V r. 16 and 17 Civil Procedure Code (Act V of 1908), the officer who serves the summons or notice on a defendant or respondent should immediately on his return, make an affidavit before the proper officer as to the service of the summons or notice for use in case it becomes necessary under O IX, r. 6 to prove that the summons or notice was duly served and in case the court con-

siders under O. XIX, r 1 of the Code, that there is sufficient reason for ordering the fact of service to be proved by affidavit.

140. No bailiff charged with the service of a process is entitled to call upon the party interested in the service to point out the person served.

It is the duty of the bailiff to use his best efforts to effect the service and it is only when he fails, inspite of such efforts, that the court may order the party to render help to him.

In cases where the serving officer does not know the individual on whom the process is to be served but such individual is pointed out to him, there should be a verification of the endorsement on the process by the bailiff and also by the person who points out the individual served. H. C. Sup. Civ. Cir. No 56; Bom. G. G., 1908 Pt I, p. 619.

PROCESS FEES IN CENTRAL INDIA.

In exercise of the powers conferred by section 20 of the Court Fees Act 1870 (VII of 1870), as applied to the Cantonments of Mhow, Neemuch, Nowgong and Sehore, and Indore Residency Bazars and the Civil Lines of Nowgong, and with the previous sanction of the Governor-General in Council the Hon'ble the Agent to the Governor-General in India is pleased to issue the following rules to regulate the fees chargeable for serving and executing processes in the said areas

Grades of Courts

I The Courts in the said areas shall for the purpose of levying fees for the service of processes, be divided into three grades —

Grades	Courts
First	The Courts of the Agent to the Governor-General in Central India
Second	First Appellate Courts
Third	District Courts, Court of Small Causes and other Civil Judges and Courts of Magistrates

Scale of fees in such Courts

II Fees for the service of processes shall be levied in each grade of Court according to the following scale, namely —

Nature of process	Court of 1st grade	Court of 2nd grade	Courts of 3rd grade
	Rs A P	Rs A P	Rs A P.
Summons, notice or other processes not being a warrant of arrest or attachment	2 0 0	1 0 0	0 4 0
Warrant of arrest	4 0 0	2 0 0	0 8 0
Warrant of attachment	4 0 0	2 0 0	2 0 0

Separate process and separate fee for each person summoned

III A separate process shall be issued for each person summoned or arrested, or upon whom a notice is served; and subject to rules IV and V a separate fee shall charged for each process

IV. When a service is set aside in any enquiry under the provisions of Order V Rule 19 of the Code of Civil Procedure, 1908, or when witnesses, etc., have to be summoned a second time in consequence of the court not sitting, or not taking up or not completing the hearing of the case on the day, on which they were first summoned, no further fee shall be levied on re-issue. In all other cases one half of the fees shall be levied upon re-issue.

Remission of fees in certain cases and levy of half fee in others.

V. When any process other than a warrant of arrest or of attachment is to be served upon four or more persons being parties, one fee only shall, according to the scale in Rule II, be charged in respect of the first four processes and an additional fee, according to the subjoined scale, shall be charged for each process to be served in excess of four, provided that the aggregate amount of the fee leviable under this rule shall not exceed the maximum prescribed for each grade of Court.

Exception in respect of process issued to parties

Nature of process	Courts of 1st grade.	Courts of 2nd grade.	Courts of 3rd grade.
	Rs. A P	Rs A. P	Rs A. P.
Rates of additional fee .	0 8 0	0 4 0	0 2 0
Maximum . . .	15 0 0	10 0 0	0 2 0

Mode of payment of Court fees on processes

VI. The stamps received for court fees shall be applied to the application upon which the process is to be issued.

VII A process issued by any Court in British territory whether of Civil, Revenue, or Criminal jurisdiction, or by any court established or continued by the Governor-General in Council or by any civil or revenue Court in Native States in Central India shall be served free of charge by any court in the said areas, if it be certified on the process that the proper fee has been levied under the rules in force in the territory in which the court issuing the process is situated. When any court in the said areas, transmit a process for service or execution to any court beyond

Service of processes issued by or to Courts *in British territory* or by or to Courts established or continued by the Government of India or by or to Courts in Native States in Central India

its jurisdiction a certificate shall be endorsed on the process that the fee chargeable under Rule II or Rule V, as the case may be, has been levied.

When process server may travel by railway.

VIII. Ordinarily process-serves should travel on foot when proceeding to serve or execute processes, but in special cases, the Judge of the court issuing the process, may permit the journey to be made by Railway In such cases the permission should be in writing and the railway fare should be paid from judicial contingencies, and not charged to the person at whose instance the process is issued

Power of Court to remit process fees.

IX. A court may remit the process fee, in whole or in part whenever it is satisfied that the complainant or the accused has not the means of paying them.

Exemption from payment of process fees

X. No fee shall be chargeable for any process of a Criminal Court issued through the Police in cognisable cases, or for any process issued by a court of its own motion in any case whatsoever or for any process issued upon the complaint of a public officer, acting as such officer *See Gazette of India, dated 27-9-1913, Part II., pp. 1797-99.*

Rules Under Section 20 and 22 of the Court Fees Act.

MADRAS.

Rules under Sec. (i)

The following Schedule of fees chargeable for serving and execution in processes issued by the High Court of Madras in its Appellate Jurisdiction, and by all Civil and Revenue Courts established within the High Court's Appellate Jurisdiction, having been framed by the High Court under section 20 of the Court-fees Act, 1870, and confirmed by the Government of Madras and sanctioned by the Governor-General of India in Council, will come into force from the 1st day of July, 1884:—*Notification No. 208, dated 16th June, 1884, Pt. I, p. 382.*

Schedule:—Civil and Revenue Courts.

Nature of process	Amount leviable in	
	Any Court of Small causes, District Munsif's Court or Revenue Court.	A District Court or Sub-Judge's Court, where the process is not issued in a Small Causes case.
I. For each summons or notice—	RS. A. P.	RS. A. P.
(a) to a single defendant, respondent or witness	0 8 0	5 0 0
(b) to every additional defendant, respondent or witness residing in the village, if the processes be applied for at the same time	0 4 0	0 8 0
II. For every warrant—		
(a) of arrest in respect of every person to be arrested		
(b) of attachment in respect of every such warrant	1 0 0	2 0 0
(c) of sale in respect of every such warrant		
(d) of delivery of possession in respect of every such warrant		

Nature of process	Amount leviable in	
	Any Court of Small causes, District Munsif's Court or Revenue Court	A District Court or Sub-Judge's Court, where the process is not issued in a Small Causes case
	Rs A P	Rs A P
With an additional fee for the services of every officer entrusted with the warrant, for each day after the third day beginning with the day on which the warrant was issued		
(e) if such officer is an Amin	0 6 0	0 8 0
(f) if such officer is a Peon	0 4 0	0 6 0
III. For every process in execution of a Village Munsif's decree	0 4 0	
IV. For proclamation, injunction or order and every process not otherwise provided for	1 0 0	2 0 0
An additional fee being leviable after the third day as above		
V.* In respect of sales, a fee by way of poundage on the purchase money, calculated at one anna in the rupee on the first 350 rupees, half anna in the rupee on any additional sum up to Rs 1,000, and quarter anna in the rupee on any additional sum above Rs 1,000		

* When a sale set aside under Section 310 A, Civil Procedure Code, the amount deducted as poundage from the deposit paid by the purchaser must be refunded to him; and the judgment debtor is expressly exempted from the liability to pay the poundage by the wording of the Section itself *M H C Progs 14th February 1895, No 133*

NOTE 1.—Any party may deposit the cost of proceeding by railway or any public conveyance, where such is available, and in such case the process-server shall be bound to proceed by such railway or public conveyance and the cost so deposited shall be part of the costs of the cause.

NOTE 2.—For processes applied for and ordered to be executed as 'emergent' the fee will be the ordinary fee and half as much again.

Payment of additional Process-fees

N. B.—Each process should be paid for according to the time which it really occupies. The party must not be charged for time occupied in serving processes other than his own, but he must pay for all the days which his own process or processes would have occupied, if it or they had alone been entrusted to the server. When one applicant puts in several processes to be executed at the same time in the same locality, the charge for any additional day occupied on account of such processes may be distributed over them. (*H. C. Circ. 8th September, 1884, No. 2607.*)

Refund of process-fees

When more than the amount required for the service of process is deposited, or when issue of process becomes unnecessary after deposit, the courts are authorised to refund to the depositer the amount of the surplus fees in money and to charge the same to the contingent fund. (*H. C. Circ. 15th July, 1873, No. 1229, Madras*)

Refunds when authorised under the above Proceedings should be granted by orders, payable on the Treasuries of the District in which the court receiving the processes is situated. (*H. C. Prods. 20th October, 1874, No. 1599.*)

Summons to witnesses, Allowances.

* A party who desires the attendance of any witness before the court, or a commissioner appointed to take evidence, shall bring into court a list, in form No. 18, of the persons whose attendance he requires, stating the full name, and residence, description, of each person, and whether he is required to given evidence or to produce any document, and in the latter case, specifying the date, if any, and description of the document, so as to identify it; and shall with such lists deposit in court the prescribed fees for service of summons, and the total amount of the allowances to which the said persons are entitled for travelling and other expenses.

* Rules 74 and 75 and Appendix III to Civil Rules of Practice, [illegible]

The said allowances shall be calculated according to the scale set out below:—

Europeans and East Indians.	Travelling allowance			Allowance for subsistence and other expenses, not exceeding per diem.
	By rail	By road	By sea or canal	
				Rs A. P.
1st Class	1st Class fare	8 annas per mile	Actual expense of Passage	3 0 0
2nd Class	2nd Class fare	4 annas per mile	Do.	1 0 0
3rd Class	3rd Class fare	2 annas per mile	Do	0 8 0
Natives				
1st Class	1st Class fare	8 annas per mile	Actual expense of Passage.	1 0 0
2nd Class	2nd Class fare	2 annas per mile	Do	0 8 0
3rd Class	3rd Class fare	annas for every 10 miles or if witness is unable to walk 1 anna per mile	Do	0 4 0

Rules under section 20 (ii).

On and after the 1st February 1890, all payments for the service of processes by the criminal courts subordinate to the High Court, in the case of offences other than offences for which the police may arrest without warrant shall be collected according to the rates fixed in the sub-joined schedule:—

SCHEDULE—CRIMINAL COURTS.

	Rs.	A.	P.
(1) Summons to defendant	0	8	0
And for every additional defendant if applied for at the same time and if resident in the same neighbourhood	0	4	0
(2) Summons to a witness	0	8	0
And for every additional witness if applied for at same time, and if witness resides in the same neighbourhood ...	0	4	0
(3) Warrant of arrest	0	12	0
(4) Notice, Order, Injunction, or Warrant not otherwise provided for	0	8	0

N. B.—(1) If a process is to be served or executed within a radius of six miles from the Court-house, half the above rates only are to be charged. The Judge or every court shall determine what villages are within the above radius, and a list of such villages shall be notified in a conspicuous place in the Court-house.

(2) When a warrant remains unexecuted for fifteen days after its delivery to the officer entrusted with its execution, an additional fee at the same rate shall be levied from the party at whose instance the warrant was issued for every fifteen days or portion of fifteen days until return is made, provided that the delay in executing the said warrant is not attributable to the officer of the Court.

2. No fees shall be levied on processes issued upon complaints by public servants or officers or servant of a railway company acting in their official capacity, which under Section 19, Cl. xviii of the Court-fees Act, 1870, are exempt from complaint fees.

PROCESS-FEES—CITY CIVIL COURT.

The following Schedule of fees chargeable for serving and executing processes issued by the Madras City Civil Court has been framed by the High Court under Section 10 of the City Civil Court Act (VII of 1892), and has been approved by the Government of Madras and sanctioned by the Governor-General in Council

SCHEDULE

Nature of Process	Amount leviable	
	In suits in which the value of the subject-matter in dispute does not exceed Rs 1,000	In all other suits
	Rs A P	Rs. A P.
I. For each summons or notice —		
(a) to a single defendant or witness	0 8 0	1 0 0
(b) to every additional defendant or witness residing in same municipal division of the City of Madras if the processes be applied for at the same time	0 4 0	0 8 0
II For every warrant —		
(a) of arrest in respect of every person to be arrested (b) of attachment in respect of every such warrant (c) of sale in respect of every such warrant (d) of delivery of possession in respect of every such warrant	1 0 0	2 0 0
With an additional fee for the services of every officer entrusted with the execution of the warrant for each day occupied in its execution after the third day beginning the day on which the warrant was issued	0 4 0	0 6 0
III For every proclamation, injunction or order	1 0 0	2 0 0
An additional fee being leviable after the third day as above	0 4 0	0 6 0
IV. For every process not otherwise provided for herein	0 8 0	1 0 0

V. In respect of sales, a fee by way of poundage on the purchase money calculated at ½ anna in the rupee on the first 500 rupees and 1 anna in the rupee on any additional sum above 500 rupees.

NOTE 1.—Any party may deposit the cost of proceeding by railway or any public conveyance, where such is available and in such case the process-server shall, be bound to proceed by such railway or public conveyance and the cost so deposited shall be part of costs of the cause.

NOTE 2.—For processes applied for and ordered to be executed as emergent, the fee will be the ordinary fee and half as much again.

NOTE.—All fees chargeable under this schedule shall be collected and dealt with in the same manner as fees chargeable under the Court Fees Act (VII of 1870).

ALLAHABAD HIGH COURT.

COURT-FEES AND PROCESS-FEES.

1. At any District or subordinate Court, where the District Judge considers it necessary, the central Nazir or Nazir may be charged with the duty of selling impressed paper to applicants for copies The paper will be supplied from the treasury or sub-treasury in quantities of value not less than fifty rupees, in the first instance without payment in ready money, and afterwards upon payment for last supply received The central Nazir or Nazir may similarly be charged with the duty of selling court-fee stamps of the value of one, four, and eight annas and one rupee, which will be supplied from treasuries or sub-treasuries in quantities of value not less than fifty rupees No commission shall be allowed on the sale by a central Nazir or a Nazir of impressed paper or court-fee stamps

No record of sale of impressed paper need be kept ; but a day book showing daily receipts and sales of court-fee stamps must be kept in the form prescribed by rule 43.

2 The fees exhibited in the following table shall be charged for serving and executing the several processes against which they are respectively ranged —

Table of fees.

Part I —In the High Courts, Appellate Jurisdiction :—

	Proper fees. Rs. A. P.
Article 1.—Notice of appeal or other notice to respondents, when the respondents are not more than four in number, *one fee*	3 0 0
When such respondents are more than four in number then the fee abovementioned for the first four, and an additional fee of eight annas for every such persons in excess of four provided that the aggregate amount of the fees levied under this article shall not exceed fifteen rupees	
Article 2—Summons to witnesses when the witnesses are not more than four in number, *one fee*	3 0 0
When such witnesses are more than four in number, then the fee abovementioned for the first four, and an additional fee of eight annas for every such witness in excess of four.	

	Rs. A. P.
Article 3.—Every warrant of arrest in respect of each person to be arrested ...	5 0 0
Article 4.—Notice, proclamation, injunction or other order not specified in any preceding article of this part when the copies to be served or posted are not more than four in number, *one fee* ...	3 0 0

When such copies are more than four in number, then the fee abovementioned for the first four, and an additional fee of eight annas for every such copy in excess of four; provided that the aggregate amount of the fees levied under this article shall not exceed fifteen rupees.

Part II.*—In the Courts of District Judges, Subordinate Judges, and Judges of Courts of Small Causes when exercising the powers of a Subordinate Judge conferred under section 31 of Act No. IX of 1887:—

Article 1.—Summons to defendants, notice of appeal or other notice to respondents when the defendants or respondents are not more than four in number *one fee*	2 8 0

When such defendants or respondents are more than four in number, then the fee abovementioned for the first four, and an additional fee of ten annas for every such person in excess of four; provided that the aggregate amount of the fees levied under this article shall not exceed twelve rupees eight annas.

Article 2.—Summons to witness, when the witness are not more than four in number, *one fee*	2 8 0

When such witnesses are more than four in number, then the fee abovementioned for the first four, and an additional fee of ten annas for every such witness in excess of four.

Article 3.—Every order of attachment ...	1 4 0

* NOTE.—When a District Judge, Subordinate Judge or Judge of a Court of Small Causes invested with the powers of a Subordinate Judge is exercising original jurisdiction in any suit which the amount and value of the subject-matter does not exceed one thousand rupees, the fees chargeable will be those prescribed in Part III or Part IV as the cause may be.

Rs. a. p.

Article 4.—In respect of the services of the officer making an attachment in the manner prescribed in Order XXI, rule 43, 44, 51 or 54 and section 46 of Act No. V of 1908 when property is to be attached in one town or village only, *one fee* .. 9 0 0

When property is to be attached in more than one town or village specified in the order of attachment, and an additional fee of two rupees for every other town or village; provided that the aggregate amount of the fees levied under this article shall not exceed fifteen rupees.

Article 5.—Every warrant of arrest in respect of each person to be arrested 3 12 0

Article 6.†—In respect of the services of each peon in whose custody a judgment debtor is left under Order XXI, rule 40 (3) of Act No. V of 1908 *per diem* 0 6 0

Article 7.*—every order for the sale of property—

(*a*) in respect of the order of sale . 1 4 0

(*b*) by way of poundage on the full amount of the purchase money—

If the sale be effected through a broker under Order XXI rule 76 of Act V of 1908	The commission payable to the broker, and in addition a sum equal to one quarter of such commission.

If the sale be conducted by an officer of the court or by any other person (not being a Collector or a broker) appointed by the court 6¼ per cent.

Rs. a. p.

Article 8.—In respect of the services of the officer making delivery of possession of property under Order XXI, rule 31, 35, 36, 95, 96, 98 or 101, of Act No. V of 1908 when property is to be delivered in one town or village only, one fee . 9 0 0

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† Note.—Fees will be paid under this article in advance for such period as the Court may from time to time direct.

* Note.—The portion (*a*) of this fee must be paid when the process is obtained, and the poundage (*b*) at the time and in the mann prescribed in rule 11, 15 and 16.

	Rs. a. p.
When property is to be delivered in more than one town or village, then the fee abovementioned for the first town or village specified in the warrant of delivery, *and an additional fee of two rupees for every* other town or village ; provided that the aggregate amount of fees levied under this article shall not exceed fifteen rupees.	
Article 9.—Notice, proclamation, injunction or other order, not specified in any preceding article of this part, when the copies to be served or posted are not more than four in number *one fee*	2 8 0
When such copies are more than four in number then the fee abovementioned for the first four and an additional fee of ten annas for every such copy in excess of four ; provided that the aggregate amount of the fee levied under this article shall not exceed twelve rupees eight annas	
Article 10 †—If the service of a process other than a warrant for the arrest of the person, be declared "emergent" as described in chapter III, rule 16 .	1 4 0
Part III.—(Except in the suits specified in Part IV). In the Courts of Munsiffs and in Courts of Small Causes—	
Article 1.—Summons to defendants, when the defendants are not more than four in number *one fee*	1 4 0
When the defendants are not more than four in number then the fee abovementioned for the first four and an additional fee of five annas for every such defendant in excess of four ; provided that the aggregate amount of the fees levied under this article shall not exceed six rupees four annas.	
Article 2.—Summons to witnesses, when the witnesses are not more than four in number, *one fee*	1 4 0
When the witnesses are more than four in number, then the abovementioned for the first four	

† Note.—This fee will be payable in addition to the ordinary fees specified in article 1, 2 or 9 of this part.

	Rs.	A.	P.
and an additional fee of five annas for every such witness in excess of four.			
Article 3.—Every order of attachment ...	1	0	0
Article 4.—In respect of the services of the officer making an attachment in the manner prescribed in Order XXI, rule 43, 44, 51 and 54 and section 46 of Act No. V of 1908 when the property is to be attached in one town or village only *one fee* ..	4	0	0
When property is to be attached in more than one town or village, then the fee abovementioned for the first town or village specified in the order of attachment, and an additional fee of one rupee for every other town or village, provided that the aggregate amount of fees levied under this article shall not exceed seven rupees			
Article 5.—Every warrant of arrest in respect of each person to be arrested	2	8	0
Article 6 *—Every order for the sale of property—			
(*a*) in respect of the order of sale ..	1	0	0
(*b*) by way of poundage on the full amount of the purchase money—			
If the sale be effected through a broker under *Order XXI rule 76 of* Act No. V of 1908: The commission payable to the broker and in addition a *sum equal to one-quarter of* such commission.			
If the sale be conducted by an officer of the court or by any other person (not being a Collector or a broker) appointed by the court	6¼ per cent.		

	Rs.	A.	P.
Article 7—In respect of the services of the officer making delivery of possession of property under Order XXI, rule 31, 35, 95, 96, 98 or 101 of Act No V of 1907, when property is to be delivered in one town or village only, *one fee* ...	4	0	0

* Note.—The portion (*a*) of this fee must be paid when the process is obtained and the poundage (*b*) at the time and in the manner prescribed in rule 11, 15 or 16

	Rs. A. P.
When property is to e delivered in more than one town or village, then the fee abovementioned, for the first town or village specified in the warrant of delivery, and an additional fee of one rupee for every other town or village; provided that the aggregate amount of the fees levied under this article shall not exceed seven rupees.	
Article 8—Notice, proclamation, injunction or other order not specified in any preceding article of this part, when the copies to be served or posted are not more than four in number, *one fee*	1 4 0
When such copies are more than four in number, then the fee abovementioned for the first four, and an additional fee of five annas for every such copy in excess of four; provided that the aggregate amount of the fees levied under this article shall not exceed six rupees eight annas.	
Article 9.†—If the service of a process, other than a warrant for the arrest of the person be declared "emergent" as described in chapter III, rule 16 ...	1 0 0
Part IV—In the Courts of Munsifs and in Courts of Small Causes in suits in which the amount or value of the subject-matter in dispute does not exceed Rs. 50.	
Article 1—Summons to defendants, when the defendants are not more than two in number, *one fee*	0 10 0
When the defendants are more than two in number then the fee abovementioned for the first two, and an additional fee of three annas for every such defendant in excess of two; provided that the aggregate amount of the fees levied under this article shall not exceed four rupees	
Article 2—Summons to witness, in respect of each witness	0 5 0
Article 3—Every order of attachment ...	0 10 0
Article 4.—In respect of the services of the officer making an attachment in the manner prescribed in Order XXI, rules	

† Note.—This will be payable in addition to the ordinary fee specified in article 2 or 8 of this part.

	Rs. a. p
43, 44, 51 and 54, and Section 46 of Act No V of 1908, when property is to be attached in one town or village only, *one fee* . . .	2 0 0

When property is to be attached in more than one town or village, then the fee abovementioned for the first town or village, then the fee abovementioned for the first town or village specified in the order of attachment, and an additional fee of nine annas for every other town or village, provided that the aggregate amount of the fees levied under this article shall not exceed three rupees

Article 5 —Every warrant of arrest in respect of each person to be arrested .	1 4 0
Article 6 *—Every order for the sale of property—	
(*a*) in respect of the order of sale	0 10 0
(*b*) by way of poundage on the full amount of the purchase money—	
If the sale be effected through a broker under Order XXI rule 76 of Act No V of 1908 — The commission payable to the broker and in addition a sum equal to one-quarter of such commission	
If the sale be conducted by an officer of the court or by any other person not being a Collector or a broker) appointed by the court	6¼ per cent

	Rs. a. p.
Article 7 —In respect of the services of the officer making delivery of possession of property under Order XXI, rule 31, 35, 36, 95, 96 and 98 or 101 of Act No V of 1908, when the property is to be delivered in one town or village only *one fee* . .	2 0 0

When property is to be delivered in more than one town or village, then the fee abovementioned for the first town or village specified in the warrant of delivery and an additional fee of eight annas for every

* Note.—The portion (*a*) of this fee must be paid in the manner prescribed in rule 11, 15 or 16

	Rs. a. p.
other or village, provided that the aggregate amount of fees levied under this article shall not exceed three rupees.	
Article 8.—Notice, proclamation, injunction, or other order not specified in any preceding article of this part, when the copies to be served or posted are not more than two in number, *one fee*	0 10 0
When such copies are more than two in number, then the fee abovementioned for the first two and an additional fee of three annas for every such copy in excess of two; provided that the aggregate amount of the fees levied under this article shall not exceed four rupees.	
Article 9 *—If the service of a process, other than a warrant for the arrest of the person, be declared "emergent" as described in chapter III, rule 16 ..	0 10 0

3 Notwithstanding rule 2, fees for progress in execution of a decree or order for money shall be charged, irrespective of the grade of the court issuing such process and of the value of the original suit, according to the amount, including interest, if any due, upon the decree or order; that is to say, if such amount exceed Rs. 1,000 fees shall be charged under Part II; if it be lees than Rs. 1,000, and more than Rs. 50 they shall be charged under Part III; and if it do not exceed Rs. 50, they should be charged under Part IV.

4. Notwithstanding rule 2 no fee shall be chargeable for serving or executing—

(1) any process which may be issued by the court of its own motion, solely for the purpose of taking cognizance of and punishing any act done or words spoken in contempt of its authority;

(2) any process issued a second time in consequence of an adjournment made otherwise than at the instance of a party or an intervenor.

(3) any copy of a warrant, order or certificate passed under Order XXI, rule 36, 54 or 96, of Act No. V of 1908, when the fee chargeable under article 4

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* Note.—This fee will be payable in addition to the ordinary fee specified in article 1, 2 or 8 of this part.

or article 8, Part II, or under article 4 or article 7, Parts III and IV, has been paid ;

(4) any copy of summons, notice, order, proclamation or other process, posted in a court house or in the office of a Collector ;

(5) any notice, issued by a District Court under Schedule III, paragraph 5 of Act No. V of 1908 ;

(6) any order intimating withdrawal of attachment or postponement of sale ,

(7) any order intimating to a sale officer that permission has been given to a decree-holder to bid for or purchase property under Order XXI, rule 72, of Act, No. V of 1908 ;

(8) any copy of a notice of an application under Act VIII of 1890, sent to a Collector under Chapter XX, rule 19 ;

(9) any order directing an officer in charge of a jail to detain or to release a person committed to his custody

5. No process which comes within the operation of rule 2, shall be drawn up for service or execution until the fee chargeable under that rule has been paid The fee shall be paid in court-fee stamps, which shall be affixed either on the application by which court is moved to issue the process, or, if no such application be filed, on the order by which the court directs the issue or service of the process If such an application be filed, it shall bear the requisite stamps for the fee in addition to such stamps, if any, as are needed for its own validity

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Notification under S. 26 of the Court Fees Act.

[1] Use of adhesive and impressed stamps.

(a) *No. 361 dated the 18th April 1883.*—In exercise of the powers conferred by Sections 26 and 35 of the Court Fees Act, 1870, and of all other powers enabling him in this behalf, and in supersession of Notification by the Government of India in the Financial Department No. 1520, dated 5th March, 1875 the Governor-General in Council is pleased to issue the following directions:—

(i) When in any case the fee chargeable under the said Act is less than Rs. 10, such fee shall be denoted by adhesive stamps only. Such adhesive stamps bearing the words "Court-fees," at present in use, or adhesive stamps of any different shape, size or pattern, bearing the words "Court-fees," which may hereafter be issued for use, in supersession of, or in addition to, the adhesive stamps now in use

(ii) When in any case the fee chargeable under the said Act amounts to or exceeds Rs. 10, such fee shall be denoted by impressed stamps bearing the words "Court-fees," adhesive stamps being only employed to make up fractions of less than Rs. 10.

(iii) If in any case the amount of the fee chargeable under the said Act involves a fraction of an anna, such fraction shall be remitted.

(iv) This Notification shall take effect on and after the 1st June 1883 See Gazette of India 1883, Pt, I, p. 189.

(b) *No. 1494 S. R, dated the 29th March, 1895*—In exercise of the power conferred by S 26 of the Court Fees Act, VII of 1870, and in supersession of so much of paragraph 1 of the Notification in *this Department No. 361*, dated the 18th April, 1883, as authorised the use of the adhesive stamp, bearing the words "Court-fees," in use on the date of the Notification for denoting the fee chargeable under the said Act, when in any case the fee is less than Rs 10, the Governor-General in Council is pleased to direct that in such cases the adhesive stamps to be used shall, with effect from the 1st

July, 1895, be adhesive stamps of the size and pattern introduced in 1883, bearing the words "Court-fees" and containing three lines in the middle, with the Queen's head and the value printed on the left side See Gazette of India, 1895, Pt. I, p. 265

[2] Use of adhesive stamps for fees referred to in S. 3, para 1 of the Court Fees Act, 1870 (VII of 1870).

(a) *No. 4070 S. R, dated the 23rd August, 1895*—In exercise of the power conferred by S 26 of the Court Fees Act, (VII of 1870), and in supersession of the Notification in this Department No 1678, dated the 18th July, 1873, the Governor-General in Council is pleased to direct that the fees referred to in the first paragraph of S 3 of the said Act shall, with effect from the 1st September, 1895, be noted by adhesive stamps of the size and pattern introduced in 1883, bearing the words "Court-fee" and containing three lines in the middle with the Queen's head and the value printed on the left side, and the word "Service" over-printed on the stamps See Gazette of India, 1895, Pt I p 722

(b) *No 3318 S R*—In exercise of the power conferred by S 26 the Court Fees Act [VII of 1870], and in continuation of the Notification of the Government of India in the Finance and Commerce Department, No 361 and 4070-S R, dated the 18th April, 1883, and the 23rd August, 1895, respectively, the Governor-General in Council is pleased to direct that the fees referred to in the first paragraph of S 3 of the said Act may be denoted by adhesive stamps bearing the Queen's head in a circle in the centre and the value printed on each side thereof and overprinted with the words "High Court Service" See Gazette of India, 1896, Pt I. p. 604.

[3] Fees for letters of administration.

No. 1522 S R, dated the 20th March, 1885.—In exercise of the powers conferred by section 26 of the Court Fees Act, 1870, the Governor-General in Council directs that the additional Court-fee payable under section 19-E of the said Act on Probates and Letters of Administration shall be denoted either.

(*a*) by impressed and adhesive stamps in the manner prescribed in Notification No. 361 of 18th April, 1883; or

(*b*) wholly by adhesive stamps of the kind described in clause 1 of Notification No. 361 of 18th April, 1883. [See Gazette of India 1885, Pt. I. p. 213.]

Rules issued by Government of Bengal under section 27 and 34 of the Court Fees Act.

See Government of Bengal Notification No. 275-S. R., dated the 9th March, 1907

"Court-fee" Stamps defined.

1. Adhesive and impressed stamps bearing the words "Court-fee" are called court-fee stamps; and the fees are chargeable under Act VII of 1870, shall be collected only by means of such stamps, subject to the exceptions mentioned in section 3 of the Act

Ex-officio vendors

2. The treasurer at the head-quarters of a district, and, at sub-divisions, the subordinate officer entrusted with the custody and sale of stamps on behalf of Government, shall be *ex-officio* vendors, and, shall sell on behalf of Government "court-fee" stamps to licensed vendors, and to the public on application

Licensed vendors

3. Such persons as may be licensed by the District Officers shall be licensed vendors, and shall sell to the public such stamps as are indicated in their licenses

License what to specify.

4 Every license shall specify the name of the licensee, the description of stamps which may be sold under the license, the place of vend, and such other matters as may be necessary, and shall be signed by the authority granting it The license shall be revocable at any time by the authority who grants it.

Fraction of an anna to be omitted in calculating fee.

5. If, in any case, the amount of the fee chargeable involves a fraction of an anna, such fraction shall be remitted.

Numer and kind of stamps to be used fees amount to less than Rs. 10.

6 When, in the case of fees amounting to less than Rs 10, the amount can be denoted by a single adhesive stamp, such fee shall be denoted by a single adhesive stamp of the required value. But, if the amount cannot be denoted by a single adhesive stamp, or if a single adhesive stamp of the required value is not available, the next lower value available shall be used, and the deficiency shall be made up by the use of one or more additional adhesive stamps of the next lower values which may be required to make up the exact amount of the fee

7. When, in the case of *fees amounting to or exceeding* Rs. 10, the amount can be denoted by a single impressed stamp, the fee shall be noted by a single impressed stamp of the required value. But, if the amount cannot be denoted by a single impressed stamp, or if a single impressed stamp of the required value is not available, an impressed stamp of the next lower value available shall be used, and the deficiency shall be made up by the use of one or more additional impressed stamps of the next lower values available which may be required to make up the exact amount of the fee, in combination with adhesive stamps to make up fractions of less than Rs. 10.

When fees amount to or exceed Rs. 10

8. When the application for the required stamp is made to a lecensed vendor of court-fee stamps, and such vendor is unable to furnish a single stamp of the required value, he shall give a certificate to that effect in the form below. The certificate referred to must be affixed to the document and filed with it:—

Certificate to be given by a licensed stamp-vendor when a single stamp is not available.

[*Form of Certificate*:

"Certified that a single stamp of the value of Rs required for this document is not available, but, in lieu thereof, I have furnished a stamp of the next lower value available, and made up the deficiency by the use of one or more $\frac{\text{adhesive}}{\text{impressed}}$ stamps of the next lower values available required to make up the exact amount of the fee."]

9 No such certificate shall be required under similar circumstances from an official vendor, but the latter shall carefully observe the same principle of issuing, whenever practicable, a single stamp of the required value, or when, *from any reason, this is not possible,* of furnishing a stamp of the next lower value available, and of making up the deficiency by the use of one or more additional stamps of the next lower value available which may be required to make up the exact amount of the fee as directed in rules 6 and 7.

No such certificate required from an official vendor.

10. Any adhesive stamp which may be used under rule 7 shall be affixed to the impressed stamp of the highest value employed in denoting the fee, or to the first sheet of the document, to be inscribed in such manner as not to conceal the value of the stamp thereon.

Mode of stamping *and engrossing instruments* for which a single stamp is not available

11. A document stamped otherwise than in accordance with the preceding rules is not properly stamped within the meaning of section 28 of the Court Fees Act, 1870

When a document is not properly stamped.

12. When one or more impressed stamps used to denote a fee are found insufficient to admit of the entire document being written on the side of the paper which bears the stamp, so much plain paper may be joined thereto as may be necessary for the complete writing of the document, and the writing on the impressed stamps and on the plain paper shall be attested by the signature of the person or persons executing the document.

Directions for the use of plain paper with impressed stamps.

13. Every licensed vendor shall at all times have stuck up, in a conspicuous place outside the place of vend a signboard bearing the name of the vendor with the words *"Licensed Vendor of Stamps"* in the vernacular language of the district He shall also have in the place of vend his license and the Acts of the Legislature and their schedules referring to the stamps sold by him, together with these rules in English, placed so that they can be readily seen and read by purchasers

Licensed vendor to exhibit sign-board, license, etc.

14. Every *ex-officio* or licensed vendor shall insert at the time of sale to the public the name of the purchaser, the date of the sale, and the signature of the vendor on the blank space left for this purpose on each adhesive court-fee stamp.

Particulars to be entered on the adhesive stamps.

[*Note* —In Calcutta and other places, where the sale of stamps of low value is so great as to render it difficult to carry out the above rule 14 in its entirety, the Board have power to relax it to such extent, and in such a manner, as may appear necessary, provided that no such relaxation shall apply to stamps of the value over one rupee ; and that, in each case, the extent and manner of the relaxation shall be distinctly stated in the order, and be published for general information (*vide* Notification, entries Nos. 6, 10 and 11, pages 73 and 75, Appendix A.—II, of the Stamp Manual]

15. Every *ex-officio* or licensed vendor shall write at the time of sale, on the back of every impressed court fee stamp which he sells, the date of the sale, the name of the purchaser, and the value of the

Particulars to be entered on impressed stamps.

stamp in full words, and shall affix his signature to the endorsement.

Rate of discount on court-fees.

16. Licensed vendors at all places purchasing court-fee stamps of the total value of Rs. 25 and upwards at one time by payment of ready money shall receive the same at a discount at the following rates:—

For stamps of the value of one rupee or less Re. 1-0-8 *per cent*; for stamps of higher value, Re. 0-12-6 *per cent.*

No discount on stamps of more than Rs. 50.

17. No discount shall be allowed on purchase of any stamps of which the value is more than Rs. 50. Stamps above that value are procurable from the District and the Sub-Divisional Officers.

No licensed vendor to get supply on credit.

18. No licensed vendor shall be supplied with stamps on credit without the special sanction of Government.

Licensed vendor to obtain supply from treasury only.

19. A licensed vendor shall obtain all supplies of stamps which he is authorised to sell only from the treasury or sub-treasury of the district for which his license was granted, and shall sell stamps only at the place mentioned in his license.

Special arrangement for vend of stamps.

20. When persons cannot be found willing to undertake the sale of judicial stamps in any locality in which the establishment of a vendor seems desirable, some person in the public service may be appointed stamp-vendor on a small salary in addition to the usual rate of discount allowed to licensed vendors. This system shall not, however, be introduced without the sanction of Government.

Who may be licensed vendors.

21. In order that the public may be provided with every facility for readily obtaining stamps in outlying localities where otherwise stamps might not always be easily available, licenses for the sale of stamps of every description may be granted to any respectable and reasonably substantial person who wishes to sell them, either as a special business, or as an addition to some other business which he carries on. At district and sub-divisional head-quarters, and in large towns where vendors are readily found, the number of them shall be such as to offer reasonable facilities to the public, but it shall be limited so as to allow of a moderate income from the sale of stamps being derived by each. Licenses may be granted to

Rural Registrars or their muharrirs, and to Postmasters with the consent of the Postmaster-General.

Every licensed vendor to keep a proper supply of stamps.

22. Every licensed vendor shall keep such stock of the stamps which he is authorised to sell as is sufficient to meet the public demand. If he fails to do so, his license may be cancelled.

Store of stamps to be open to examination

22A.* Every vendor licensed to sell stamps shall allow the District Officer, or any gazetted officer duly authorised by him, and, within the compounds belonging to the Civil Courts, the District Judge, or any gazetted officer duly authorised by him, at any time to inspect his work, and to examine the store of stamps in possession

Ministerial officers not to be allowed any discount.

23. No treasurer or other subordinate officer in charge of stamps shall purchase stamps at a discount for sale on his own account to the public

Special care to be taken with adhesive stamps

24 Extra precaution shall be taken to preserve the adhesive stamps from damp, and to prevent their becoming firmly fixed together by the gum on the back The stocks shall be carefully examined and dried when necessary, and the place where they are stored shall be always kept properly dry The sheets also, as far as possible, shall be kept face to face and never back to back.

Adhesive stamps to be kept in tin box within the almirah or chest in some districts.

25 As extra precaution seem to be necessary, in the district of Darjeeling and the districts of the Presidency, Orissa, and Burdwan Divisions, to preserve adhesive stamps from damp, the Treasury Officers of these Districts shall keep all adhesive stamps remaining in their hands in a small air-tight and locked tin box within the stamp almirah or chest.

Deficiency in store to be at once reported

26 Any deficiency that may be discovered in the store of stamps shall be immediately reported, both to the Controller of Printing, Stationery, and Stamps for information, and to the Commissioner of the Division, who shall report it to the Board

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* See Bengal Government Notification No 391-S. R., dated the 22nd April 1907

Issue from double locks.

27. The Treasury Officer shall cause the store under double locks to be opened, and the required quantity of stamps to be counted and delivered in his presence to the treasurer at the head-quarters of a district, and, at subdivisions, to the subordinate officer entrusted with the custody and sale of stamps on behalf of Government. The number and value of stamps delivered to the treasurer at head quarters, and to the subordinate officer at subdivisions, shall be entered in the store-book, and the balance struck at the time of delivery. This balance shall be attested by the initials of the Treasury Officer and treasurer at head-quarters, and of the Treasury Officer and subordinate officer at sub-divisions, both of whom shall invariably be present during the whole time that the store under double locks or any part of it remains open. The deliveries shown in the store-book shall agree with the indent as approved, and shall also agree with the entries in the account of daily sale (*i.e.*, single-lock account) of the treasurer at head-quarters, and of the subordinate officers at sub-divisions.

Issue from double locks at intermediate times.

28. If the treasurer at head-quarters or the subordinate officer at a sub-division requires stamps at any intermediate time, the same process shall be observed as is prescribed in the preceding rule.

Agreement of daily sales with Accountant's register.

29. In checking the account of daily sales of stamps as laid down in rule 18 of the rules prescribed by the Government of India in the Resolution of the Finance Department, No. 3715-Exc., dated 30th June, 1905, the officer in charge of the depot shall see that the daily totals agree with the Accountant's Register of Stamp Sales, and initial both.

Supervision by District Officers and Commissioners

30. District Officers shall exercise a strict supervision over their treasuries in this department, and Commissioners shall, in their inspectional visits, pay particular attention to the state of the stamp account.

Half-yearly verification of stock.

31. In making the half-year verification of stock on the last open day of September and March each year, a statement shall be prepared showing the number and value of each denomination of stamps as they are examined, and the verifying officer shall see, by personally testing the same, that the values shown in this statement under each denomination corresponds with the true value as ascertained by actual calculation, and that the total value of each description corresponds with the

sum of the totals of each denomination The total value of each description shall then be carried into the half-yearly certificate prescribed in rule 36 of the Rules of the Government of India referred to in rule 29 above

Personal liability of Treasury Officer.

32. Every Treasury Officer shall be held personally liable for any loss that may occur to Government during his incumbency owing to his neglect to observe the rules.

Cross-totalling of entries.

33 Inspecting officers invariably, and the officer in charge of the depot from time to time, shall cross-total the entries in the register of stamps under double and single locks

Account of daily sales in sub-treasury

34. In sub-divisions, when the Sub-Treasury Officer is present at his station, and no account is *made over over to the sub-treasurer* for custody under single lock, the daily account of sales mentioned in rule 18 of the Rules of the Government of India referred to in rule 29 shall be kept up by passing the daily sales through the account both as receeipts and issues. While the Sub-Treasury Officer is away, the daily account shall be maintained like any other single-lock account

Refund of impressed court-fee stamps and of court-fee adhesive labels

35 When any person is possesed of impressed court-fee stamps for which he has no immediate use, or which have been spoiled or rendered unfit or useless for the purpose intended, or when any person is possessed of two or more (or in the case of denominations below Rs 5, four or more) court-fee adhesive lables which have never been detached from each other, and for which he has no immediate use, the Collector shall, on application, repay to him the value of such stamps or labels in money, deducting one anna in the rupee, upon such person delivering up the same to be cancelled, and proving to the Collector's satisfaction that they were purchased by him with a *bona fide* intention to use them, that he has paid the full price thereof, and that they were so purchased, or, in the case of impressed court-fee stamps so purchased, spoiled, or rendered useless, within the period of six months preceding the date on which they were so delivered

Provided that the Collector may, in special cases, allow refunds when application is made within one year from the date of purchase of the stamps or labels, or also, in the case of impressed court-fee stamps, within one year from the date on which the stamps were spoiled or rendered useless

[*Note 1.*—Government of India Letter No. 3170-S. R. dated

the 28th June 1900, to the Government of Burma; circulated with the Board's Circular Order No. 3 of August 1900:—

Published with the Board's Circular Order No. 5 of March 1888.

The Government of India has ruled that, under the rules in paragraph 1 of the Resolution in the Department of Finance and Commerce No. 132 dated the 11th January 1888, refunds of the value of impressed court-fee stamps can be granted in cases in which the plaint for filing a suit has been written on the stamps, but has not been presented to the court, the necessity for doing so having ceased to exist.

Note 2.—See Resolution of the Government of Bengal, Financial Department, No. 687-S. R., dated the 16th November 1909, delegating power to subordinate authorities below the rank of Collector to sanction refunds of stamps—Entry No. 3, Appendix C.—IV., page 213 of the Stamp Manual.

Note 3.—Government of Bengal, Financial Department, Letter No. 210-T S R. dated the 21st June 1910

In Government Order No. 19-T, dated the 14th August 1874, it was decided that it is within the power of Government to waive its own rights, and to refund the value of judicial stamps, if it thinks proper to do so. It was also laid down that refunds should not, as a rule, be allowed; but that they should be permitted only under circumstances of special hardship each case being separately reported for the order of Government. In accordance with this decision, the Government of Bengal has hitherto dealt with such applications for refunds except in the case of probates and letters of administration, regarding which there are specific provisions in Section 19A to 19C of the Court Fees Act, 1870.

The Government of Bengal has ruled that the power of granting refunds of judicial stamps (in cases not expressly provided for in the rules of Government) should in future be exercised by the Board, who will continue to be guided by the principles prescribed in 1874.]

Refund of value of stamps to vendors less one anna in the rupee.

36. (*1*) In the following cases, the full value of the stamps returned into store, less one anna in the rupee, shall be paid to the stamp-vendors:—

(*a*) When the vendor resigns his license;

(*b*) when the license is revoked for any fault of the licensee;

(*c*) when the stamps are returned on the death of the vendor;

(*d*) when the stamps are returned on the application of the vendor for leave to restore any stamps.

Refund of value of stamps to vendors less discount.

(2) In the following cases, the full value of stamps returned into store, less only the discount allowed on their sale, shall be paid to the licensed vendors:—

(a) When stamps are returned on expiry of the license ;

(b) when they are recalled by Government ,

(c) when the license is revoked for any cause other than the fault of the licensee ·

Stamps may be exchanged.

Provided that a licensed vendor may exchange unsold stamps, which are fit for use, for other stamps of the same kind Provided also that no adhesives stamp shall be received back into store unless, in cases where the value of each lable is not less than Rs 5, there are at least four of such labels which have never been detached from each other

Refund of adhesive labels attached to impressed sheets of court-fee stamps.

37 When adhesive labels are attached to impressed sheets of court-fee stamps in accordance with the directions contained in Notification by the Government of India · No 361 dated the 18th April 1883, such labels shall be regarded as impressed stamps for the purposes of refund under the rules

Refund of the value of the stamp on the plaint presented to any Civil or Revenue Court

38. When a plaint disclosing a reasonable case on the merits is presented to any Civil or Revenue Court, in such a form that the presiding Judge or officer, without finding the defendant, rejects it, not for any substantial defect, but on account of an entirely technical error in form only, and so as to leave the plaintiff free to prosecute precisely the same case in another form against the same defendant or defendants, the value of the stamp on the pl
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described, and that the value of the stamp should, in his opinion, be refunded

Renewal, on the certificate of the presiding officer of any Court, of adhesive court-fee stamps which have been rendered useless.

39 The presiding officer of any court, when adhesive court-fee stamps are used, shall, in the exercise of his discretion, be competent to issue a certificate for the renewal, free of charge, of the stamp or stamps on any document, in any case in which the re-writing of such document has, through inadvertence or accident, been, in his opinion rendered necessary,

or when, after it has been duly stamped, and the stamps have been cancelled, it is found that the reason for presenting it to, or filing it in, the court has ceased to exist. Such certificate shall be sufficient authority to the Collector or officer in charge of a subdivision, as the case may be, to issue to the holder of a certificate other stamps of the value specified in the certificate, on delivery of the stamps which have been rendered useless.

Renewal of stamps used under section 3 of the Court Fees Act in the High Court of Calcutta on the certificate of the taxing-officer.

40. As regards stamps used under Section 3 of the Court Fees Act in the High Court of Calcutta, the taxing-officer mentioned in Section 5 of the Court Fees Act, VII of 1870, is, in the exercise of his discretion, competent to issue a certificate for the renewal, free of charge, of the stamps on any document in cases when the re-writing of such document has, through inadvertence or accident, been, in his opinion, rendered necessary; or when, after a document has been duly stamped, and the stamps cancelled it is found that the reason for presenting it to, or filing it in, the court has ceased to exist Such certificate shall be sufficient authority to the Collector to issue the holder of the certificate other stamps of the value specified in the certificate on delivery of the stamps which have been rendered useless.

Contents of application.

41. Application for refund or renewal shall be made in the printed form given below (which shall be obtained from the officer in charge of the Forms Department by indent in the usual way), containing the particulars required by law, with counterfoil including the receipt to be given by the Collector, and the receipt for money or fresh stamps, as the case may be to be given by the party. These forms are to be obtained from the Nazir or stamp-vendors at one pice per sheet. Stamp-vendors may obtain the forms from the Collector's office at the rate of eighty copies per rupee for retail to the public at one pice per sheet and, while such printed forms are available, they shall be used by applicants:—

FORM OF APPLICATION FOR REFUND OR RENEWAL	APPLICANT'S RECEIPT.	COLLECTOR'S RECEIPT
1. Name of applicant 2. Description of stamp (*i.e.*, impressed or denoted) 3. Value. 4. Date of the purchase. 5 Where and from whom purchased 6. Date of the stamp becoming spoiled or unfit for use 7. Manner in which the stamp has become spoiled or unfit for use 8 Whether the application is for refund or renewal 9 Date of application *I do hereby declare* that the statements made above are true to the best of my knowledge and belief. *(Signature of applicant.)* 10 Date fixed for disposal 11 Date of disposal 12 Final order 13 Initial of Collector	Received from the Collector of. . the sum of Rs only, being the value of spoiled stamps, less one anna in each rupee of the nominal value. *(Signature.)* *(Date.)* Received from the Collecor of fresh stamps as follows — Number | Value | Amount TOTAL *(Signature of Applicant.)* *(Date.)*	Received an application with . . . . spoiled stamps, value Rs . .. praying for $\frac{\text{Refund}}{\text{Renewal}}$ thereof under section Act VII, of 1870. Of these . . . . stamps, value Rs are herewith returned as inadmissible Orders will be passed on *(Signature of the Collector.)* *(Date.)*

Register of application

42. The Collector shall keep a register of applications for refund or renewal in the form given *below* —

REGISTER OF APPLICATION FOR REFUND OF THE VALUE OR RENEWAL OF STAMPS.

The following particulars shall be entered in this register:—

(1) Serial number of application.

(2) Date of application.

(3) Name of applicant

(4) Number and description of stamps delivered for refund or renewal—

(a) Number.

(b) Description.

(5) Value of each stamp.

(6) Total value.

(7) Abstract and date of Collector's order.

(8) Amount of refund granted in cash.

(9) Value of stamps allowed to be renewed.

(10) Value of stamps returned in respect of which refund or renewal is refused.

(11) Date of refund, renewal, or return of stamps to applicant.

(12) Receipt of applicant or his duly-authorized agent.

(13) Signature of Collector.

(14) Date of despatch of stamps to the Controller of Printing, Stationery, and Stamps for destruction.

(15) Date of receipt of Controller's certificate of destruction.

(16) Remarks.

Procedure after receipt of applications.

43 One receipt of an application, the stamped papers shall be continued, and the counterfoil attached to the form shall be filled up and returned to the applicant, who shall be told when the Collector's order will be passed.

The Collector to examine the stamps and the grounds of application.

44. The Collector shall satisfy himself that the stamps are genuine and that no marks of cancelment have been erased. He shall also carefully examine the ground of the application before granting the refund *or renewal.*

Particulars to be noted by the Collector at the time of granting refund or renewal.

45. If the Collector is satisfied that the applicant is entitled to the refund or renewal, he shall grant such refund or renewal, as the case may be, inserting the necessary particulars in the counterfoil attached to the application, and taking the applicant's receipt thereon.

Procedure to be followed when affidavit or deposition is necessary.

46. If the Controller thinks it necessary to require an affidavit he shall return the application for that purpose. If a deposition be thought necessary, the Collector shall take it, or have it taken at once.

N. B.—The Collector shall bear in mind that it is not obligatory on him to require a deposition or affidavit in every case. It will probably be found sufficient ordinarily to have the application verified as provided in the form of application.

Procedure when stamp is purchased in different districts.

47. If the stamp has been bought in a district other than that in which it is presented for refund or renewal, the Collector shall refer the applicant to the Collector of the district where the stamp was purchased

Who to receive application.

48. Applications for refund or renewal may be received by either the Collector or the Stamp Deputy Collector. in the latter case, they shall be sent immediately to the Collector for orders.

Treasurer's report necessary in exceptional cases.

49 The Controller may only, where the circumstances of the case are very exceptional, call for a report from the treasurer

Refunds when to be made.

50 Refunds shall, if possible, be made on the day of application

Procedure when application is made to Sub-divisional Officer

51. An application for refund of the value or renewal of stamps purchased at a sub-division may be received by the Sub-divisional Officer, who shall forward it, with the stamps, and with the deposition of the applicant if a deposition is considered necessary, to the Collector for disposal

Entries in the register of application where to be filed in

52 Columns 1 to 6 of the register referred to in rule 45 above shall be filled up on the day any application is filed, and the remaining columns when it has been disposed of.

Circumstances under which applications may be struck off and the stamps destroyed.

53. Where an application for refund of the value or renewal of spoilt or useless stamps is sanctioned, or a deposition, affidavit, or further evidence demanded in support of it, if the amount of the refund or fresh stamps are not taken, or the deposition, affidavit, or further evidence called for is not given, as the case may be, within one year of the date of the order, in either case, the application shall be struck off, and the stamps sent to the Controller of Printing, Stationery, and Stamps for destruction.

Cancellation of stamp after grant of refund

54. Where a refund or renewal is granted, the District Officer shall then and there punch or mark the stamp in such a way that it can never be presented again.

Cancelled stamps to be forwarded to Controller of Printing, Stationery, and Stamps

55. At convenient intervals, not less frequent than once a fortnight, stamped papers, in respect of which refund or renewal has been granted, shall be forwarded by the Collector to the Controller of Printing, Stationery and Stamps in a sealed packet for distinction, together with an extract from the refund register relating to each stamp. On receipt of the stamps, the Controller will cause them to be carefully examined to ascertain that they are genuine, and in order; and any irregularity which the Controller may notice shall be communicated to the Collector, who will report to the Board of Revenue.

N. B.—The despatch of stamps in respect of which refund or renewal has been granted shall be so arranged that the first fortnightly batch may reach the Controller of Printing, Stationary, and Stamps not later than the tenth of month, and the second not later than the twentieth (Board's Proceedings of 19th May 1900, Nos 183-84, and of 25th August 1900, No 81, Collection 10, Files 37 and 646 of 1900).

Destruction of stamps by Controller of Printing, Stationery and Stamps

56 If the Controller finds that the number and value of the stamps received corresponds with the extract from the Refund Register, and that the stamps are genuine, he will destroy them, and certify to the Collector that he has done so.

For Rules made by

Ajmer Merwara . . .	*see* Gazette of India, 1903, Pt. II, p. 1068.
Bombay	*see* Bombay R. and O, Vol. I, and Bombay Government Gazette, 1907, Pt. I, p. 723.
Burma	*see* Burma Gazette, 1902, Pt. I, p. 95, and *ibid*, 1909, Pt. I, p. 226.
Central Provinces	*see* Central Provinces Gazette, 1902, Pt. III, p. 70: *ibid*, 1903, Pt. III, p. 47.
Eastern Bengal and Assam ...	*see* E. B. and Assam Gazette, 1908, Pt. II, p. 642.
Punjab	*see* Punjab Government Gazette, 1900, Pt. I, p. 406.
United Provinces	*see* North Western Provinces and Oudh Gazette, 1900, Pt. I, p. 621.

Rules for Refund of the value of Court Fee Stamps.

I. G. Resolution, No. 132, dated the 11th January, 1888.

In supersession of all existing orders on the subject, the Governor-General in Council is pleased to authorise the refund of the value of impressed court-fee stemps and of court-fee adhesive labels in accordance with the following rules —

1. (*a*) When any person is possessed of impressed court-fee stamps for which he has no immediate use, or which have been spoiled or rendered unfit or useless for the purpose intended, or

(*b*) When any person is possessed of two or more (or in the case of denominations below Rs 5, four or more) court-fee adhesive labels *which have never been detached from each other* and for which he has no immediate use, the Collector shall, on application, repay to him the value of such stamps or labels in money, deducting one anna in the rupee, upon such person delivering up the same to be cancelled and proving to the Collector's satisfaction that they were purchased by him with a *bona fide* intention to use them, that he has paid the full price thereof and that they were so purchased or, in the case of impressed Court-fee stamps, so purchased, spoiled or rendered useless, within the period of six months preceding the date on which they are so delivered Provided that Local Governments may, in special cases, allow refunds when application is made within one year from the date of purchase of the stamps or labels, or, also in the case of impressed Court-fee stamps, within one year from the date on which the stamps were spoiled or rendered useless The Local Governments may at their discretion delegate this power to any subordinate authority

2 When a licensed vendor surrenders his license or dies, the Collector may at his discretion, if he considers that the circumstances justify the application, repay to him or his representatives, as the case may be, the values of stamps and labels, not spoiled or rendered unfit for use, returned into the Collector's store, deducting one anna in the rupee; or he may issue stamps and labels of other values in exchange, provided that, in the case of adhesive Court-fee labels their value may not be refunded nor stamps and labels of other values issued in exchange, unless, in cases where the value of each label is

not less than Rs. 5, there are at least two such labels which have never been detached from each other; and in cases where the value of each label is less than Rs. 5, unless there are at least four such labels which have never been detached from each other.

3. When adhesive labels are attached to impressed sheets of Court-fee stamps in accordance with the directions contained in Notification by the Government of India in this Department, No. 361, dated the 18th April 1883, such labels should be regarded as impressed stamps for the purposes of refund under these rules.

Refund in cases of hardship.

In Government Order No. 19-T dated the 14th August, 1874, *it was decided that it is within the power of Government* to waive its own rights, and to refund the value of judicial stamps if it thinks proper to do so It was also laid down that refunds should not, as a rule, be allowed, but that they should be permitted only under circumstances of special hardship, each case being separately reported for the orders of Government. In accordance with this decision, the Government of Bengal has hitherto dealt with such applications for refunds except in the case of probates and letters of administration regarding which there are specific provisions in sections 19A to 19B of the Court-fees Act, 1870. The Government of Bengal has ruled that the power of granting refunds of judicial stamps (in case not expressly provided for in the rules of Government) should in future be exercised by the Board, who will continue to be guided by the principles prescribed in 1874.—*Vide Letter No. 210—T. S. R., Government of Bengal, Financial Dept., dated the 21st June, 1910.*

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